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THE
LAW and PRACTICE
OF
FINES
AND
RECOVERIES.

CONTAINING

- I. A *Definition* and *Description* of the various Sorts of FINES and RECOVERIES, and the Methods of passing them; not only in the common Form, but also where they vary; as in *London, Chester, Lancaster*, the Great Sessions of *Wales*, &c.
- II. Plain and Easy INSTRUCTIONS in passing through the several Offices, from the *Præcipe* to the Final Issue; with Lists of the FEES taken at each Office.
- III. RULES and ORDERS of Court relating to the PRACTICE.
- IV. CASES adjudged in LAW and EQUITY concerning FINES and RECOVERIES.
- V. Some PRECEDENTS of this Manner of Conveyancing.

With a TABLE to the Whole.

By R. MANBT, late of *Lincoln's Inn*, Gent.

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R



To the Right Honourable
Sir JOHN WILLES, Kt.

Lord Chief Justice of the Court
of Common Pleas,

And one of his MAJESTY'S most
Honourable Privy Council.

MY LORD,

THERE is a grateful
Pleasure in doing
Good, known to few in so
eminent a Degree as Your
LORDSHIP.

A 2 YOUR

iv DEDICATION.

YOUR LORDSHIP'S
Candor, Justice and Affa-
bility, are diffused on all.
In Assurance whereof, I
am encouraged to offer to
Your LORDSHIP'S Pro-
tection the following *Trea-*
tise, being a Branch of the
Practice of that Court in
which Your LORDSHIP,
by Real Merit, presides:
And should it meet with
Your LORDSHIP'S Ap-
probation, it would suf-
ficiently recommend it to
the World.

AND WERE

DEDICATION. V

WERE I to attempt
to enumerate the amiable
Endowments possessed by
Your LORDSHIP, I should
fear offending; therefore
humbly beg Leave to sub-
scribe myself, with the
greatest Deference,

MY LORD,

Your Lordship's

Most Obligated and

Obedient Servant,

The Editor.

DEDICATION

(vii)

WILLIAM I. to the

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PREFACE

to the

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dering the Law Proceedings

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IN the following Treatise, Notice is taken of the Statutes, new Cases in Law and Equity, Rules of Court relating

viii The PREFACE.

lating to the Practisers, the Manner and Method of suing out and passing Fines, and suffering Recoveries, in London, Chester, Lancaster, the Great Sessions of Wales, and other Parts of England, where they vary from the common Form. Also great Variety of Precedents of this Manner of Conveyancing; with whatever is requisite to render this Work compleat, and proper for the Professors of the LAW.

Lately Published,

BIBLIOTHECA LEGUM. Or, A New and Compleat List of all the Common and Statute Law-Books of this Realm, and others relating thereunto, Alphabetically digested, giving an Account of their several Editions, Dates and Prices, and wherein they differ.

To which is added,

A TABLE of the Cotemporary Reporters, from their first Publication to this Time; by which, at one View, may be seen all the Cases adjudged in every Reign.

Compiled by J. WORKALL.

THE
LAW and PRACTICE
OF
Fines and Recoveries.

*Of the Origin and Nature of Fines,
with the several Definitions and
Descriptions thereof.*

A Fine (*Finis*) has various Applications in the Law; as sometimes it is used to signify a Penalty; sometimes it is taken for an Income of Lands or Tenements let by Lease; sometimes it stands for an Amends or Pecuniary Satisfaction, or Recompence for an Offence committed against the King or his Laws, or against a Lord of a Manor; in which Case it is said *Facere finem de Transgressione cum Rege*. There is also a common Fine in Courts Leet, &c.

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But a Fine, as now taken and intended, may be described to be an Instrument of Record (improperly called a Deed) of an amicable Composition, or final Agreement made, in a formal fictitious Suit betwixt Parties by their own Consent, without real Controversy, concerning Lands, Tenements and Hereditaments, by the Consent or License of the King, or his Justices in the Court of Common Pleas, and ingrossed of Record in the same Court, or others authorized thereto, to end all Controversies between those that are Parties or Privies to the same, and all Strangers not claiming in due Time. It is called a Fine, because it makes a final Agreement and End of all Controversies; and it was originally a Composition of a real Controversy in all real, personal and mixt Actions, instituted and allowed by the Law and ancient Course of Proceedings, in Regard that no Demandant or Plaintiff could agree without the License of the Court; and it was called *Finalis concordia, quia finem litibus imponit*. *Glanville, lib. 8. c. 1. Bract. lib. 5.*

But if a Fine be consider'd as a common Assurance, it is only a feigned Action, or a *Fictio juris*, because the Suit is brought in a voluntary, and not in a compulsory Way; therefore it is a fictitious Action brought on a Writ of Covenant, for it generally begins with a Writ of Covenant. The *Præcipe*, to which are the Mandatory Words, supposed to be given as a Command or Charge to the Conusors to hold Covenant with the Conusees of such and such Lands, &c. in order to form a Foundation for this Agreement to be had thereon, with the proper Order and Solemnity; and

that fictitious Suit was advanced in Imitation of what was before intended as a Determination of a real Controversy, as shall presently be shewn; therefore, as it is now strictly taken, it only supposes a Litigation or Controversy to have been, where in Reality there has been none, but only invented and made to secure the Title a Man has in his Estate against all Men, or to cut off Entails, and with more Certainty to convey the Interest or Title of Land, and to alien the same, if Occasion be, to whom he pleases, either in Fee-simple, Fee-tail, for Life or Years; wherein also a Rent may be reserved; but no Conditions or Covenants for a Render of the Concord can be of any other Thing that is contained in the Writ of Covenant, nor of a foreign Thing, if it be not consequent. See 18 *Ed.* 4. 12. And nothing must be in the Writ of Covenant, but what the Conusor is actually seized of; this Fine is a Feoffment on Record, and implies in it Livery and Seisin. 1 *Inst.* 50. a.

Tho' it is improperly so called, but the Meaning of it was, that it has the Effect of a Feoffment to some Purposes, if he that levied the Fine was seized of the Freehold at the Time of the Fine being levied. 1 *Salk.* 340.

Also a Fine is a formal ceremonious Conveyance of Lands or Tenements, or of any inheritable Thing having a Being at the Time of such Fine, to the End to cut off all Controversies; and Fines are Covenants made before Justices, and entred of Record, and are Records of great Credit: For it is by Imputation made in the Presence of the King, who is supposed to be present in all his Courts, the Law

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attributing to him a Sort of Ubiquity. Therefore it does bind Females Covert and others, being Parties, whom the Law ordinarily disables to transact, only for this Reason, that all Presumption of Deceit and Evil Meaning is excluded, where the King is privy to the Act.

It is a Fine, as before said, because it puts a final End to Suits, Controversies and Litigations supposed to have been had, I say, supposed to be made on a Controversy, &c. because originally it was made on a Suit really depending, and was a friendly Agreement, Composition and Determination betwixt Demandant and Tenant in the Lord's Court; and was easily admitted formerly in those Courts, where the Suitors being Judges were the sooner dismiss'd from their Attendance, and the Lord Paramount suffered nothing thereby; because the Litigating Party paid a Fine for his *Licentia Concordandi*, as they do now to the King; which was in Lieu of Amercements, which were constantly paid on really controverted Suits.

By Observation of the Convenience which accrued from this Manner of compromising Controversies, and by their favourable Reception in the Courts of Justice, Men naturally began to oblige one another to compose their Differences in this facile and amicable Manner, it being attended with less Time, Trouble and Expences to both the litigating Parties: And the Judges, considering these Acts as publick Acts of the Court, allow'd them Sanction, with the Forms, Ceremonies and Solemnity directed by the Court in passing them; and at length were improved into that useful and common Conveyance as they now stand directed

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ed by the Statute of 4 H. 7. c. 24. and 38 of H. 8. We see therefore, as to the Origin of Fines, that they were first brought on real Actions, but are now by Imitation and Fiction brought to be common Assurances; for in the first Case the Conufee, which is the Plaintiff, had brought an Action of Covenant against the Conufor to compel him to perform his Covenant; to which Action the Conufor having nothing at all to fay why he fhould not perform his Covenant, he therefore agrees to do it; and this Agreement was made and enter'd upon a Record, by which all Parties were bound. But now it is become a common Assurance, and the Action is not really brought in an Adverfary Manner, but is *fictio juris*, in order to form a Foundation for this Agreement to be had thereon.

And therefore a Fine, as now eftablifhed, may juftly be described to be an Agreement of the Parties on Record, by which Lands are transferred from Conufor to Conufee, with or without Remainder; and is eftimated paramount to a Feoffment or Investiture by Livery, being not only Tantamount to the Notoriety of Livery, but carrying with it the undoubted Credit of a Court of Record to protect and fupport it; and has this Convenience and Security attending it, that it does not only transfer and fet over the Right of the Vendor, and all Claimants under him, but alfo extinguifhes the Rights of others, who are or may be guilty of Negligence or Laches of making their Claim in due Time.

The Civilians call a Fine *Transactio judicialis de re immobili*. Sir Henry Spelman describes

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it to be, *Finis est solemnis ritus transferendorum prædiorum in Curia Regis Civilium Causarum, quo nihil sanctius, vel Augustius, ad alienationes & Hereditates stabiliendas.* Spelm. Gloss. 228.

And further says, *Fines hujusmodi maxime placere, quod propter testationis magnificentiam non solum ad stabiliendas lites maxime valebant, ideoque emptoribus terrarum tanquam sacra anchora culta & admirata.* Spelm. Gloss. Verb. Finis, 228.

This Fine is called a Feoffment of a Record, tho' improperly, yet it has the Effect of a Feoffment to some Intents and Purposes, viz. if he that levied the Fine was seised of the Freehold at the Time of the Fine's being levied. 1 Salk. 340.

Further, This Fine includes a Feoffment, and does operate further of its own Nature; and bars Intails peremptorily, whether the Heir claims within five Years or not, if he claims by him that levied the Fine.

At this Day Fines are of great Force, and esteemed an Assurance or Conveyance of the highest Nature, and most Perfection in the Law, because it is said to be *done & concessit*, whereas a Recovery seems to be by judicial Process; 1 Inst. 22, 62. and levied with Proclamations, according to the Statute 1 R. 3. c. 7. 4 H. 7. c. 24. 11 H. 7. c. 1. 32 H. 8. c. 36. & 31 El. c. 2. for then they discharge for ever, as well Parties and Privies as Strangers to the same, except Females Covert, other than such as are Privies, and every other Person at the Time of levying such Fine, excepting as excepted in the above Statutes.

Yet it must be acknowledged, that in some respects a common Recovery exceeds it, for a
Fine

Fine will bar the Heir in Tail, but not him in Remainder or Reversion; but a Recovery bars them all.

Fines are said to be as ancient as any Court of Record, as my Lord *Coke* informs us, 2 *Inst.* 511. and were long before the Conquest, as appears by a Fine levied before the Conquest, concerning the Possessions of the Abbey of *Crowland* and divers others. *Plowd. fol. 375.*

And Fines were leviable before the Statute of 18 *Ed. 1.* commonly called *Modus levandi fines* in Inferior Courts on Bills and Complaints, which now cannot be but by Grant or Custom, by Reason of the negative Words of that Statute: But this does not extend to Ancient Demeasne Courts; for then this Statute would make Fines leviable in the Court of Common Pleas, whereas they are not but reversible by Writ of Disceit; so that they would be under a double Disadvantage, that a Fine could not be levied any where, if not in the Court of Ancient Demeasne, whereas that which is their Privilege could not be intended to be to their Disadvantage. *Salk. 340.*

Observ. Note, That these Sort of Fines were invented as one Means to destroy Perpetuities so abhorr'd in the Law, because they hinder'd other Provisions of Necessity, and were the Cause of many contentious Suits and Inconveniencies, which were in Part remedied by the Operation and Use of Fines, in destroying Estates-tail; but were totally extinguished by Recoveries in barring of Remainders and Reversions, as will be seen when we come to set forth the Doctrine of them.

*Of the several Kinds of Fines, and
the Division thereof.*

Fines are double or single, with Proclamations or without.

A double Fine is that which contains a Grant or Render back again from the Conufee to the Conufor, as of the Land itself, or of some Rent, Common, or other Thing iffuing out of it, and thereby confequent to it; oftentimes limiting Remainders to Strangers not named in the Writ of Covenant, and fometimes with Refervation of Rents, Clause of Distrefs and Services *nomine pænæ*, with Grant of the fame over, with Clause of Warranty; whereby it is to be obferved, that when a Fine is levied to divers Conufees, the Right fhall be limited to one of them only; and the Eftate limited to his Heir only, whose Right it is acknowledged to be. And in Cafe of a double Fine, the Release and Warranty must be from the Heirs of one of the Conufors, for in a Fine from divers the Fee must be fupposed to be in one of them only. *West. Pref. tit. Fine 30.*

N. B. Collateral Warranty is taken away by the 4 & 5 of *Ann. c. 16.* All Warranties fince the first Day of *Trin. Term Ann. Dom. 1705*, by Tenant for Life of Lands, Tenements, Hereditaments, the fame descending to any Person in Reversion or Remainder, fhall be void. Warranties are pleadable only in real Actions, as in Recoveries. *Wood's Inst. of Actions, b. 4. c. 4.*

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And if divers join in a Fine, it is said the Warranty must be by them, and the Heirs of one of them, which is the Owner of the Land. 44 Ed. 3. Yet if there are divers Conufors, they may warrant feverally, and either generally or specially; for Warranties are sometimes general, that is, against all Men, sometimes against all except a single certain Person, sometimes against certain Persons only, sometimes against every Conufor and his Heirs feverally, sometimes against one of the Conufors and his Heirs only, sometimes of all except a certain Part, and sometimes of a Part only certainly exprefs'd.

The single Fine is that by which an Estate is granted by the Conufor to the Conufee, and nothing is thereby render'd back again by the Conufee to the Conufor.

Others divide Fines into four Kinds;

1st, A Fine *fur Conufance de Droit come ceo que il ad de fone done, &c.*

2dly, A Fine *fur Conufance de Droit tantum.*

3dly, A Fine *fur Done Grant & Render.*

4thly, A Fine *fur Conceffit.*

The first is the best and surest Kind of Fine, and is most commonly used, as being the surest for the Purchaser; this Sort of Fine, and that *de Droit tantum*, convey a Fee-simple to the Conufee without Words of Inheritance; for when the Conufor acknowledges the Land to be the Right of the Conufee, it proves contradictory to his own Acknowledgment, to claim Interest in the Land in Remainder or Reversion. And in every Judgment a Fee-simple was recovered, and the Conufee coming in
Lieu

Lieu of the Judgment, must import as much necessarily, and carry as much with him, unless the express Acknowledgment of the Parties qualify it.

And consequently if the Limitation be expressly to the Conusee and the Heirs of his Body, the Fine passes only an Estate-tail. *Co. Read. 4.*

This Sort of Fine is said to be executed, because it does of its own Force give immediate Possession (at least in Law) to the Conusee; so that he needs no Writ of *Hab. fac. seisinam*, for it admits the Possession of the Lands, of which the Fine is levied, to pass by the Fine, so that the Conusee may enter, for that the Estate is thereby in Law in the Conusor; that is to say, to such Uses as are declared in the Deed to lead the Use thereof; for this is a general Maxim, unless it be declared by Deed or otherwise, to what Use the Fine was levied, such Fine is to be, and enure to the Use of the Conusor that levied the same. This Fine is levied with Proclamation, according to the Form of the Statute 4 *H. 7. c. 24.* and it is called a Feoffment on Record, and implies Livery and Seisin. *Prac. Reg. 148. Bendl. Rep. 134.*

In this Sort of Fine the Conusor acknowledges the Right of the Conusee, and it is said to be a single Fine; this cannot be levied by two and their Heirs, 1 *Ro. Ab. 19. Co. Read. 5, 9.* for the End of Fines being not only to settle the Possession for the present, but for ever, the Admittance of such a Fine would not answer the End, for besides the Uncertainty which of the Conusees should survive and enjoy

joy the Lands, the Fine itself cannot operate according to the Limitation; for the Survivor, by the Privilege of Jointenancy, shall enjoy the whole, and for ever exclude the Heirs of the other Conufee; and the Fine being equivalent to a Judgment, as beforefaid, ought to decide, fix and settle the Right of the Fee; the fame Law is againft the Grant of a Reversion; fee *Bro. tit. Fines* 65. But if Lands are granted to two and the Heirs of one of them, this is good, for all Things will continue as the Fine has fettled them, *ibid.* This Sort of Fine cannot be levied to any Person that is not Party to the Writ of Covenant; neither can the Grant and Remainder of the Land be immediately *in primo gradu*. See of this *Co. 2. Inst. 514.*

2dly, A Fine *fur Conuzance de Droit tantum*. This Sort of Fine is faid to be Executory, and much of the Nature of a Fine *fur Conceffit*; and this Fine feems to be the moft ancient, for the Conufance being in place of the Judgment, which was always Executory in adverfary Suits, the Demandant was obliged to follow the Rules of the Law, and to fue out Execution; but in Time, when the Fines became the common and beft Way of Purchafing, that is to fay, when they became a *Fictio juris* in Imitation of what was before real, the Purchafer, to prevent the Trouble of fueing out Execution, had Seifin given him by Livery in the Country; and for his further Security obliged the Vendor by Covenant to levy a Fine. And thus this Sort of Fine came in Ufe and Practice, which fupposes a precedent Gift, by which the Conufee was

was put in Possession, and therefore needed no Execution of what he actually had.

It is much used to pass a Reversion, and then it is expressed by such Fine, that the Particular Estate is in another; and that the Conusor is willing that the Conusee shall have the Reversion, or that the Land shall remain to him after the particular Estate spent and determined.

It is sometimes used by Tenants for Life to make a Release in the Nature of a Surrender to him in Reversion, (but not by the Word *Surrender*); for it is affirmed that a particular Tenant, as for Life, cannot surrender his Term to him in Reversion or Remainder by Fine, but he may grant and release to him by Fine. 44 Ed. 3. 36. 3 Inst. 86. Dyer 216. Plowd. 2, 68.

If the Conusor has the Freehold of the Land, then it is called a Fine *sur Release*, and needs no Seisin upon it, if the Party is in Possession.

Note; It is said a Fine upon a Release may not enure to an Use. 3 Inst. 36.

3. A Fine *sur Done Grant and Render*. This Fine conveys all which the Conusor intended to pass away; and if Lessee for Life, the Remainder for Life, and the Lessee levies this Fine to him in Remainder, this inures by Way of Surrender. This Sort of Fine *sur Surrender* is much the same as those *sur Conusance de droit*, only the Clause of Warranty is omitted.

A Fine *sur Done Grant & Render* is called a double Fine, being in a Manner two Fines, viz. a Fine *sur Conusance de droit come ceo*,
and

and a Fine *sur Concessit* both formed into one; and supposes the Conusor to release with Warranty to the Conufee the Lands contained therein; and the Conufee by the same Deed grants or renders back the Land, or some Part thereof, to the Conusor himself, or to Strangers who are not mentioned in the Writ of Covenant.

This Fine is partly executed and partly executory; as to the first Part, it is the same with a Fine *come ceo*, &c. but as to the other Part, containing the Grant and Render back, it is taken in Law to be rather a private Conveyance, or a Charter betwixt Party and Party, and therefore only executory, because Possession of the Lands was not executed by the Fine, but remains to be had by a Writ of *Hab. fac. seisinam*; this Writ lies within the Year after Fine or Judgment. See *Old Nat. Brev. fol. 265*. So as it is executory, in that Respect, it is not as a Writ of Judgment on Record.

If the Party be in Possession, it may be said to be executed, and needs no Writ of Seisin. *5 Co. 38*.

The Render is sometimes of the whole Fee, sometimes of a particular Estate with Remainder or Remainders over, or the Reversion; sometimes with Reversion of Rents with Distress, and sometimes with a Grant thereof over by the same Fine.

And *Note*, That the Render of a Fine cannot be without Writing to any other Use. *Mod. R. 629*.

And also a Render must be made on a *Come ceo*, *Sur Release*, or other Fine executed.

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There is a Difference between a Fine *Come ceo*, and a Fine *Sur Grant & Render*, which contains, as before said, a double Fine, for the former must be levied of the Land in the Writ of Covenant; that is, the Agreement must relate to the whole Land there set forth, but the latter may be as of another Thing than is mentioned in the Original; but then it must so far be not another, as to be implied Incident or Part of what is contain'd in the Writ of Covenant; nor can it be of any Thing collateral to the Land, and contained in the Writ, or of another Nature, *5 Co.* neither issuing out of, or incident to the Land contained in the Original. If two levy a Fine, the Grant and Render may be to one of them, and none can take the first Estate by way of Render, but the Conu- sors, or one of them.

Though to make a good Grant and Render, the Land render'd must pass to the Conusee by the Fine, for he cannot render what he hath not, *3 Rep.* 98. *Hughes's Abr.* 936. A Man may not by this Fine reserve to himself a less Estate by way of Remainder, than the Fee, and the Render of a Rent, if any be, must be to one of the Parties to the Fine, and not to a Stranger. *Dyer* 33, 69. *2 Rep.* 39. To make a Lease for Years, and by Fine, with a Render, the Lessee must acknowledge the Land to be the Right of the Lessor that is seised thereof; and then such Lessor grants and renders the same back again to the Lessee for a certain Number of Years, reserving Rent, &c. and this is a good Fine: But if the Lessor be Tenant in Tail, then to bind him, he and the Lessee are to acknowledge the Tenements to be
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the Right of *A. B.* who is to render the same by the Fine to the Lessee for Years, the Remainder to the Lessor and his Heirs, &c. 44 *Ed.* 3. 45. See 2 *Leon.* 206. A Fine and Render is a Conveyance at Common Law, and makes the Conusor on the Render back a new Purchaser, by which Lands arising on the Part of the Mother, may go to the Heirs on the Part of the Father, &c. 1 *Salk.* 337. 2 *Nelf. Abr.* 864.

N. B. If two levy a Fine, the Grant and Render may be to one of them.

Observe also, That by a double Fine, or Fine with Render, almost any kind of Contract about Land may be made and drawn up in Form by a Fine of this Nature. *West Symb.* 2 *Part.* *Perk. Sect.* 629.

4. A Fine *sur Concessit* is such an one, where the Conusor being seised of Lands contained therein, and the Conusee has no Freehold in them, but it passes by the Fine, this Fine is said to be executory; so that Conusee or Conusees must enter, or have the Writ of *Habere Facias Seisinam*, according to their several Cases; for the obtaining the Possession of the Thing granted: But if they be in Possession at such Time, there needs not any such Writ, or any Execution of the said Fine, to put them into Possession, for then the Fine will enure by way of Extinguishment of Right, and does alter the Estate or Right of the Conusee, however perhaps it may better it.

Fines are either with or without Proclamations, and are executed or executory; a Fine without Proclamations, is called a Fine at Common Law, and levied in such manner as was used

used before the fourth of *H. 7. c. 24.* and still remains of Force to discontinue the Estate of the Conufors, if it is executed. *Plowd. 265. b. Dyer 216. p. 54.* That with Proclamations is termed a Fine, according to the Statutes of *1 R. 3. 7. 4 H. 7. 24. 32 H. 8. 36. 31 Eliz. c. 2.* and such a Fine is every Fine that is pleaded, intended to be, if it be not shewn what Fine it is; and these Sorts of Fines with Proclamations are the best and most useful, and it is said, 'tis in the Option of the Conufee to have them with or without Proclamation; and if there be Error in the Proclamations, yet the Fine shall be taken as a good Fine at Common Law, without Proclamations. *Jenk. Cent. 6. Caf. 53. Cō. 1 Inst. 519.*

The Proclamation is no essential Part of the Fine, though a necessary Concomitant or Adjunct. Proclamations are absolutely necessary to a Fine *come ceo*, (but not to a Fine *sur Concessit*) for they make a Bar to what doth pass; and Fines were openly to be read at two certain Days in the Week, by the Discretion of the Justices; and by the *1st* of *R. 3. 7.* Fines at the Common Law have the same Force they had before, and ought to be levied according to that Statute, or the Common Law, at the Election of the Parties.

The Proclamations were to be made four several Days in each Term, during four succeeding Terms, by the *1st* of *R. 3. 7. 4 of H. 7. 27. 32 H. 8. 39.* but by the *31st* of *Eliz. 2.* Fines in the Common Pleas shall be proclaimed four Times only, *viz.* once in the Term the Fine is engrossed in, and once in each of the three Terms then next succeeding.

If any Proclamation be made on a *Sunday*, it is Error, *Dyer* 128. Fines, as has been said, are either executed or executory; executed is such a Fine, as of its own Force gives present Possession, as the Fine *Come Cæo*; and in some Points, a Fine *Sur Release Confirmation & Surrender* is said to be executed.

Executory does not execute a Possession without Entry or Execution, as a Fine *Sur Cognizance de Droit tantum*, when the Conusee has no Freehold, and *Sur Concessit*, *Sur Done Grant & Render*, and requires a Writ of Seisin, unless the Party was in Possession before.

Note, That almost any kind of Contract may be made, compleated, and executed by a Fine, as it may by Deed; and it may be so made, that one of the Parties shall have the Land, and the other a Rent out of it; and that one shall have it for one Time, and another for another Time, by a Fine and a Lease for Years.

Of the several Parts of a Fine, and when they begin to operate.

THE first Part of a Fine is the original Writ, and the Precipe containing the mandatory Words of it, which is a Command or Charge supposed to be given to the Conusees, to hold Covenant with the Conusors of such and such Lands. The Forms of which see among the Precedents after. Without the original Writ, the Fine is erroneous, and may be reversed in the *King's Bench*, for by this Writ the Parties are brought within the Jurisdiction
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of the Court. This Original is now generally the Writ of Covenant, yet Fines may be taken on all Writs where Lands are demanded, or are to be charged, or which any way relate to them: A Fine may be levied on a Writ of Right Close, or in any real Action, but not on an Original in a personal one; and the common Writ of Covenant is a real Action. 1 *Salk.* 340.

The Practice is now, for the Conusor to make the Conufance, and acknowledge the Fine before any Original sued out; and if the Conusor dies before the Writ of Covenant sued out, yet the Fine shall stand. *Farmer's Case*, 2 *Vent.* 47. And in these Cases the Originals were sued out, and made returnable of a Term precedent to the Conufance; and this allow'd for Expedition sake.

When the Parties are judicially in Court by Original, the Counsel for the Conufee appears with the Precipe and Concord, which is in nature of a Declaration, setting forth the Conufance, which ought to be made by the Tenant to the Writ, after his Appearance is recorded; then follows his Conufance, which is no more than an Acknowledgment, that the Manor or other Lands, &c. contained in the Writ, belong of Right to the Demandant, as Land which he has of the Gift of the Tenant, with a general Release and Warranty to the Conufee and his Heirs. See *Co. Read.* 3.

The next considerable material Thing, being the second Part of a Fine, is the King's Silver; this is enter'd on the Writ of Covenant, and gives it the Force and Virtue of a Fine, 2 *Inst.* 511. 5 *Co.* 39. and is granted to the King pro *Licentia Concordandi*, in Recompence of the Amer-

Amerciaments and other Fines, which become due to him on Judgments, and on Suits in adversary Proceedings, and is paid by him that takes the Fee Simple of the Fine; the Sum is express'd on the Entry of the Covenant, with the Plea, and between whom, with Mention of the Land.

This is called a Post-Fine also, in respect to the first Fine in the Hanaper, which is due on the Original; and this not due till the Licence to agree is granted by the Court, and is collected about Half a Year after, or longer; and from the Entry of the King's Silver, the Fine is obligatory, and begins to operate; and from thence the Fine shall stand, though the Parties die before the other Parts are accorded and compleated. 3 Mod. 140. Dyer 220. 2 Inst.

57. 5 Co. 29. But if the Conusor dies before the King's Silver is enter'd, the Fine is voidable, and may be reversed by Error.

2nd ed. v. 11. H. 10. 330.

The next and third Part of a Fine is the Concord, which is the very Covenant and Agreement between the Parties, Conusors and Conusees; in the Form of which observe; that if it be on Conufance *Come ceo*, &c. or *Sur Grant Done Release or Confirmation*, such are called single Fines, nothing being render'd back from the Conusees to the Conusors. .

Next is the Note of the Fine, which is no more than a Docket taken by the Chirographer, it is taken out of the Writ of Covenant and Concord before ingrossing; from this Note he transcribes the Indentures, which are delivered to the Party to whom the Conufance was made; and when this is done, the Fine is said

to be ingrossed. 5 Co. 39. 2 Inst. 468. F. N. B. 147. It begins thus: Between *A. F.* Plaintiff, and *D. M.* Defendant, and recites the whole Fine, or the Substance thereof.

The next Branch or Part of a Fine, which is the fifth Part, (for Fines are said to have six Parts) is the Foot of a Fine, which includes the whole Fine: 1st, The Parties thereunto. 2^{dly}, The Thing granted. 3^{dly}, The Day, Year and Place, and before whom the Concord was made.

And it is called the Foot of the Fine, because it is the last Part; when this is done, the Fine is ingrossed of Record, and the Indentures made by the Chirographer, and delivered to the Party to whom the Fine is levied.

The sixth and last Part are the Proclamations; of which before.

Note; In completing an Assurance by a Fine *Sur Concessit*, levied by Husband and Wife to secure a Sum of Money lent on Lands, in which they are both Tenants for their respective Lives, there must (besides the Fine) be a Mortgage Deed for 99 Years, together with the Parties Conusors insuring their Lives, Attornment of Tenant or Tenants, Bond to perform Covenants, with the usual Oaths from the Parties Conusors, that the Estate is not incumbered, and a Letter of Attorney to empower the Conusee or Agent to receive the Rents, if the Money is to be paid by Parcels.

Who may levy Fines, or be Conusors, and to whom.

Observe, that whatever legal Defects there may be in the Conusor, if the Judge admits the Conufance, the Fine shall stand in all Cases, except that of an Infant, though the Judge omits a very necessary Part of his Duty in admitting such Fines. *Co. Read. 2 Inst. 515.*

And the principal Defects are either want of Discretion and Understanding, as in Infants, Ideots, and Persons of *non sane Memory*, or want of Power, as Females covert.

And Fines suffered by Infants, though strictly speaking, all Contracts made by Infants are in their own Nature void, yet if Infants are admitted to levy Fines, these Fines are good and unavoidable, unless reversed during their Minority. *1 Inst. 233.*

And civil Societies have so far supply'd the Defect of their supposed Want of Understanding, and have taken so much Care of them, as to allow them to make a Contract for their Benefit, present and future Advantage, with Power to recede from, avoid and vacate it, when it may prove prejudicial to them.

And the Method to set aside such a Contract, must be by Matter of equal Importance and Notoriety with the Manner in which it was made; and therefore if an Infant levies a Fine, which is no more than his own Agreement, recorded as the Judgment of the Court, he must reverse it by Writ of Error, and must be brought

during his Minority, that the Court of *King's Bench* may by Inspection determine the Age of the Infant; but the Judges, by Adjuncts, may in such Cases inform themselves, as by Witnesses, Church Books, &c. *Co. Litt.* 380. *b.* *Moor* 76. 2 *Roll. Abr.* 15.

And if an Infant, bringing a Writ of Error for his Nonage, and Inspection, and Proof of his Infancy by Witnesses, dies before the Fine is reversed, his Heir may reverse it; because the Court having recorded the Nonage of the Conusor, ought to vacate his Contract, when he appeared to be under a manifest Disability at the Time he enter'd into it. *Co. Litt.* 360. *Moor* 884.

An Infant acknowledg'd a Fine, and the Conusees omitted to have the Fine ingrossed till he came of Age, in order to prevent the Infant from bringing a Writ of Error; yet the Court, upon View of the Conusance produced by the Infant, and upon his Prayer to be inspected, and his Age examined, recorded his Nonage, to give him the Benefit of his Writ of Error, which he must otherwise lose, his Nonage determining before next Term. *Moor* 74, 189. But where an Infant may levy a Fine, he may declare the Uses of it by Deed, and such his Declaration of Uses shall be good and binding to him and his Heirs, so long as the Fine continues unreversed. *Hob.* 204. *Leon.* 193. 2 *R.* 58. 10 *Rep.* 42. An Infant now, contrary to what was held formerly, may suffer a common Recovery by Guardian; for, by Intendment, he shall have his Recompence in Value; and if it be not for the Good of the Infant, he may have

have his Recompence against the Guardian.
2 *Danv. Abr.* 772.

As to Ideots and Lunaticks, a Distinction must be made between their Actions done in *Pais*, and those solemnly done of Record; the Law is plain, that in neither Cases they are admitted to disable themselves, for the Insecurity that may arise in Contracts from pretended and counterfeited Madness and Folly, but their Heirs and Executors may avoid such Acts done in *Pais*, by pleading the Disability; because, if they can prove it, it must be presum'd real, since no body can be thought to counterfeit it, when he can expect no Benefit by it himself.
4 *Co.* 124. *Beverley's Case.* *Co. Litt.* 247. *Cro. Eliz.* 398. *F. N. B.* 202. But in some Cases, they themselves may have Relief in Equity.

But neither a Lunatick nor his Heir may vacate any Act of his done in a Court of Record.
4 *Co.* 124. The same, in Case of an Ideot.
2 *And.* 193. Farther, as Fines ought not to be taken from Lunaticks and Ideots, so they ought not to be taken from doting old Men, who have lost the Use of their Reason; but if they be weak and infirm through Age and Sicknes, that will be no sufficient Cause to refuse them.
West's Pres. tit. *Fines*, § 4. Nor from Men overcharged with Drink.

Who may be Conusors in Fines.

BODIES Sole or Corporate, or all Persons, Male or Female, that may lawfully grant by Deed, may be Conusors in Fines. A Fine may be levied by a Feme Covert, and the Hus-

band only can avoid it, nor is it avoidable by her after his Death.

Infants, Women Covert, Lunaticks, Ideots, those that are blind, dumb, deaf, or in their Dotage, that want Discretion, one that is drunk, as before said, or compell'd by Durefs of Imprisonment; these are not admitted to levy Fines: And the Judges and Commissioners are, in some Cases, left to their Discretion whom to admit; for although a Liberty of excepting against such a Fine is in many of these, yet it may chance to be out of their Power to avoid it. *Fieri non debet, sed factum valet.* 4 Co. 114. 12 Co. 124. Co. Litt. Sect. 731.

A Mayor and Commonalty, and those Civil Corporations that have an absolute Estate in Possession belonging to their Corporations, may levy a Fine of the Land belonging to their Corporations, as well as a single Person may do, provided it be done together, and with a joint Consent: But a good Fine cannot be levied by any one, though the Head of the Corporation, nor any of its Members, without the whole Corporation consenting in general.

All those who have any Estate of Freehold in Ecclesiastical Lands, in Right of their Churches, such as Bishops, Deans and Chapters, Heads and Fellows of Colleges, &c. are restrain'd and forbid, by divers Acts of Parliament, from levying Fines of the Lands belonging to them. 21 Ed. 4. 13. Plowd. 11, 78, 122. 11 Co. 78.

A Fine is void, levied by the Heir that intrudes upon the King's Possession. 1 H. 7. 5. 24 Ed. 3. 65.

Also

Also a good Fine cannot be levied of an Estate-Tail of the King's Provision or Gift.

Neither to bind the King nor Issue in Tail, by 32 H. 8. cap. 28.

Also, by Stat. 32 H. 8. cap. 36 & 28. Fines are void levied of any Lands forbid to be sold by Act of Parliament.

And a Man cannot levy a lawful Fine, without the Consent of his Wife, that hath an Estate in Fee-Simple, or an Estate-Tail, or for Life, in Land in her own Right. *Ibid.*

Those who levy a good Fine, must be possessed of such an Estate in the Land, as is no way prohibited by any Law to levy the Fine, otherwise it will be void.

Persons levying a Fine, who stand attainted of Felony or Treason, it will be good against them, and all others, but the King and the Lord of whom the Land is held. 17 Ed. 3. 52. 17 Aff. Pl. a. 1 H. 7. 7. 9 H. 6. 20. 8 Aff. 25. So that great Care must be taken in levying such Fines.

Persons waived or outlaw'd only in personal Actions, may levy a Fine.

A Joint-Tenant, Parcener, or Tenant in common, levying a Fine of the Land so held by him to a Stranger or other, either Joint-Tenant, Tenant in common, or Parcener, it will be good. 26 H. 8. 9. Dyer 69, 334. Plowd. 338, 378. 4 Ed. 4. 68.

And 'tis said, Tenant for Life, the Remainder or Reversion in Fee in another, can levy a Fine *sur Grant & Release*, &c. of those Lands that he hath for Life, to hold to the Conusee for Life of the Tenant for Life. 44 Ed. 3. 36.
But

But it is forfeit if he give a larger Estate.
4 H. 7.

N. B. The Law is the same with Regard to such Fines, whether by Tenant in Dower, Tenant in Tail after Possibility, or Tenant by the Courtesy, 39 Ed. 3. 16. But it seems to be no Forfeiture of a Rent.

Having enumerated the several Kinds of Fines, it will not be amiss to add what follows, from Piggot and Lord Salisbury's Case, 2 Mod. 109. namely, That a Fine *sur Concessit* has been always taken to be the most harmless (and of less Operation of the Law) than any other; and compared only to a Grant of *totum statum suum, & quicquid habet, &c.* by which no more is granted than what the Conusor had at the Time of the Grant, and consequently that it shall not work a Disseisin to a third Person; also that no more shall pass by such a Fine than what lawfully may without Prejudice to another: And rather than it shall be construed to work a Wrong, the Estate shall pass by Fractions, and the several Interests remain separate, notwithstanding such Fine. 2 Mod. 112.

Indeed there is a Fine *sur Concessit* which expresses no Estate of the Grantor, and this is properly levied by Tenant in Fee or in Tail, (and passes the whole Estate, &c.) But when particular Tenants pass over their several Estates by such Fine, they generally grant *totum & quicquid habent in Tenementis prædictis*, not expressing what particular Estates they have therein. *Ibid.* There are several Arguments in that Respect relating to this Sort of Fine *sur Concessit*.

When this Fine *sur Concessit* was first invented, the Judges in those Days looked upon the Words *quicquid habent, &c.* to be insignificant; and for that Reason in *Anno 17 Ed. 3.* 66. they were refused. The Case was, Two Husbands and their Wives levied such a Fine to the Conusee, and thereby granted *quicquid & totum habent, &c.* which Words were rejected; and the Judge would not pass the Fine, because if the Party had nothing in the Land, then nothing would pass; and so is 44 *Ed. 3.* 36. by which it appears that the Judges in those Times thought these Fines did pass no more than what the Conusor had; and for this there are Multitudes of Authorities in the Year-Books.

As to what relates to the Sort of Fine *sur Done Grant & Render*, see the following Case of *Price* against *Langford*——— *Pasch. 2 W. & M. B. R. Intr. Hill. 2 & 3 Jac. 2 Rot. 1059.*

H. was seised in Fee as Heir of the Part of the Mother; he and his Wife levied a Fine to A. and B. with Warranty; A. and B. by the same Fine did grant and render the Lands to the Husband and Wife in Tail, Remainder to the Heirs of the Husband: The Husband and Wife died without Issue; and the Question was, whether the Heir *a parte Paternâ*, or *a parte Maternâ* should take these Lands? It was argued on the one Side, that the Seisin of the Conusee was fictitious; for if the Conusee were Tenant for Years, the Term would not be thereby extinguished, and he is like to the Surrendree of a Copyhold, nothing but a mere Instrument; therefore nothing is altered by the Fine, but the Use and Estate remains as before,

fore. On the other Side it was said, That the Conufee could not render if he had not the Eftate in him, and that it was a Reinfeoffment; and of this Opinion was the Court, who held that the Eftate was once in the Conufee, and the Fine and Render is a Conveyance at Common Law; and the Render makes the Conufor a new Purchafer as much as a Feoffment and Reinfeoffment at Common Law.

Winchburgh v. Bellwood, Pasch. 4 W. & M. B. R. Error being brought in B. R. of a Fine in C. B. the Fine was affirmed, and now a Writ of Error *coram vobis resident* was brought here; and Exception was taken, that the Writ ought to abate, for that no fuch Writ lies in this Cafe, becaufe only a Transcript of the Fine is removed into this Court; and it was likened to the Cafes of Error in the Exchequer Chamber, where only a Transcript goes up; and if the Writ abates, no Writ of Error *coram vobis* lies.

Sed per Cur', The Reason of that is not becaufe they in the Exchequer Chamber have only a Transcript, but becaufe they have only a particular Authority to affirm or to reverse. It was admitted that a Transcript of the Record of a Fine is only removed, becaufe upon Judgment of Reversal a *Certiorari* goes for the very Foot of the Fine, and it is cancell'd. But notwithstanding that, the Court held that Error *coram vobis resident* lay.

*The Fine sur Conufance de Droit,
and this Fine generally intended
when a Fine is mentioned.*

4thly, **T**HAT a Fine *sur Conufance de Droit* come ceo que il, &c. generally implies a Fee-simple, but it is only by Implication, and therefore there is no Repugnancy to limit an Estate for Life to the Conufee, for the precedent Donation or Feoffment, which is fupposed, might be for Life only, or in Tail; and the general Intendment of the Conufance may be qualified by an exprefs Limitation. *Vide 41 Ed. 3. 14. Co. Litt. 9. b.*

5thly, That the Suitors, who are Judges, might act by Attorney, becaufe it is a Part of their Service *ratione tenuræ*; and they are Judges *quatenus Tenants*. *Quilibet liber homo qui feftam debet libere poffit facere Attornatum fuam ad feftam fuam pro fe faciend'*. *Stat. Merton, c. 10.* and this is Part of his Suit. *Vide 2 Infl. 225. F. N. B. 25, 156.*

There was another Point in this Cafe, *viz.* Whether it appeared by the Verdict that the Issue in Tail was barred of his Formedon by 21 Jac. 1. and if fo, whether he had loft his Right of Entry alfo? But for the Refolution of that, *vide* this Cafe, Title *Limitations*.

As to the Concord of a Fine, obferve the Cafe of *Lloyd verf. Vifcount Say and Seal*, *Mich. 10 Ann. B. R. 1 Salk. 341.*

A Fine was thus; *Hæc eft finalis concordia facta in Cur. Regis apud Weftm. a die Sancti Michaelis*
in

in tres septiman' Anno decimo Willielmi tertii coram Thom. Trevor, &c. Et postea in crast. Sanctæ Trinitat. 1 Annæ concess. Et recordat' coram ejusdem Justiciar. so that the Concord of the Fine was of one Term, and the Recordat. of another Term following; and therefore the Question was, of which Term this should be said to be a compleat Fine?

Per Cur': It is a Fine that Term when the Concord was made, and of which the Writ of Covenant was returnable, for the Concordia facta in Curia is the complete Fine, the Concess. Recordat. is the Leave of the Court to inroll it. 6 Co. 68. Hob. 330. 2 Vent. 47. which follows.

Anonymus.

A Fine was acknowledged before *Herbert, C. J.* by a Man and his Wife, 7 *December* 1689; and by Reason that the late King *James* had deserted the Kingdom and taken away the Great Seal, there followed a Stop of Proceedings at Law; and the Woman died the 20th of *February* following, and upon the 22d of *February* the King's Silver was paid, as upon a Writ of Covenant in King *James's* Time, tho' no Writ was then sued out. But afterwards a Writ of Covenant was taken out, returnable in *Michaelmas* Term last, which was sealed with the Seal of King *William* and Queen *Mary*; and the Fine was engrossed and made as a Fine in *Michaelmas* Term.

And this present Term it was moved, that the Fine might be vacated; and the Book of

1 *H. 7. fol. 9.* was cited, where the Conusance of the Fine was in the Time of *R. 3.* and afterwards a Writ of Covenant was sued in the Time of *H. 7.* which being shewn to the Court they stopped the Fine. Tho' it is said in that Case, that it is the common Course to take the Acknowledgment of Fines, and then to sue out a Writ of Covenant; but they said they would not permit a Precedent, that an Acknowledgment of a Fine should be in the Predecessor King, and the Writ of Covenant in the Time of his Successor.

But the Court, after the Cause had been twice moved, and full Consideration of it, gave their Opinions, That the Fine should stand; for the Entering of the King's Silver after the Party's Death could not be now examined, in regard the Fine was ingrossed and compleated as a Fine of *Michaelmas* Term. And so was *Farmer's* Case, *Hob. 330.* and *Carryl's* Case, *Dyer 220. b.* The Court would not stop a Fine taken of a Feme Covert when she was dead. 1 *Roll. Rep. 114.*

Note; Several Precedents were shewn where Fines were set aside for undue Practice in the Passing of them, viz. in Case of personating Fines taken by Commissioners of Infants, &c.

And to this Purpose is the Case of *Warncomb* and *Carryl* cited in 3 *Mod. 141.* which was, Husband and Wife levied a Fine of the Wife's Lands by *Dedimus* in *Lent* Vacation, she being then but nineteen Years of Age; but the King's Silver was enter'd in *Hillary* Term before, and she died in the *Easter* Week; and upon Motion the first Day of *Easter* Term

32 The Law and Practice of

to stay the Engrossing of the Fine, the Court denied it, for they held it to be a good Fine.

Another Reason why this is not assignable for Error is, because it is directly against the Record, which is of *Trinity* Term, and can be of no other; and to prove this *Arundel's* Case was cited, where a Writ of Error was brought to reverse a Fine taken before *Roger Manwood* Esq; a Judge on his Circuit; the *Dedimus* was returned *per Rogerum Manwood Militem*, he being Knighted, and made Chief Baron the Term following; the Fine passed, and this was afterwards assign'd for Error, that he who took the Caption was not a Knight; but it being directly against the Record, they would not intend him the same. *Adjorn.* afterwards the Fine affirmed. 3 *Mod.* 141. But see a Fine levied by an Infant vacated without any Writ of Error. 3 *Lev.* 36.

Who may be Conusees.

Corporations Spiritual, Temporal, Civil or Corporate, may be Conusees in Fines; but there always goes a Writ, before the Ingrossing such a Fine, to the Judges of the Court of Common Pleas.

Any Person capacitated to be a good Grantee may be a good Conusee. Any Man or Woman, Sole or Covert, of full Age or under Age, Lunaticks, Madmen, Ideots, any one of *insane* Memory, in Prison or out; beyond Sea, outlaw'd in a Personal Action, attainted of Treason or Felony, an Alien, Bastard, or Clerk Convict, may all be good Conusees; a Fine le-

vied to any such will be good. Friers, Monks, Nuns, &c. are esteemed as dead by the Law; they cannot be Conufors or Conusees: A Fine levied by or to any of them will be void. 22 Ed. 4. 4. 15 Ed. 4. 21. 5 H. 7. 25. 19 H. 6. 25.

Any Infant or Feme Covert Conusee in a Fine, need not be examined as when Conufor. 24 Ed. 3. 62. 3 H. 6. 41.

Conufors and Conusees in Fines must be called by their right Names of Baptism and Sirname; and if two of a Name, it is proper to distinguish them by Elder, Younger, &c.

A Fraternity or Corporation must be denoted by the very Name of the Corporation, as in the Foundation and Charter of it. 11 H. 4. 44. 12 H. 4. 20. 7 H. 6. 27. 37 H. 6. 29.

Noblemen are named by their Christian Name and Dignity only; but Knights, Esquires, Gentlemen, by their Christian and Surnames, with their Additions of Honour; I. K. Bart. P. 2. Kt. L. M. Esq; N. O. Gent. &c. Bishop, Prebend, &c. are added by mere Courtesy, the Fine being good without it. 21 Ed. 4. 8. 1. 1 Aff. pl. 11. 7 H. 4. 22. 14 H. 6. 15. Brownl. 30.

Timothy for *Timothy*, *Ann* for *Anne*, or any such small Difference in a Name, will not prejudice the Fine; yet a Fine levied to a Man and his Wife (*B.* and *Sibel*) the Woman's Name being *Isabel*, was vacated. 1 Aff. pl. 11.

In Case of a Fine levied by Man and Wife, if the Wife be misnamed, this Fine is said to bind her by Estoppel.

A Fine stands good, tho' a Feme Sole, after the Teste of the Writ of Covenant and *Deditmus potest* to take Conufance of a Fine of her,

and before the Day in Bank to ingross and record it, should marry, and it shall be recorded, by her Name when single. But her dying at such Time will avoid the Fine.

N. B. If a Woman have two Husbands living, and with her second acknowledges a Fine by his Name, this Fine it seems is void; but levying a Fine with her right Husband, tho' by a wrong Christian Name, it is not avoidable. 7 *H. 4.* 22.

How, and before whom Fines are to be acknowledged; with a Table of Charges or Fees, and Rules and Orders of Court.

FINES are acknowledged either in open Court, or before the Lord C. J. of the Common Pleas at his Chambers, or elsewhere out of Court, before him, who for the Time being only has Power *ex Officio* to take Conusance of Fines without a special *Dedimus potestatem*, which is a Writ issuing out of the Chancery by Virtue of the King's Commission to certain Commissioners: This *Dedimus* is by the Statute of *Carlisle*, but the then Practice is altered now. This Power or Privilege is given him by the Prerogative of his Office. *Dyer*, fol. 224. *pl. 31.* *Jenk.* 4 *Cent. Case 28.*

They, that take Conusance of Fines *ex Officio*, are the Lord C. J. of the Common Pleas and his Bretheren, and the rest of the Judges

Judges of that Court in open Court, while the Court is sitting.

And further, Fines may be acknowledged before one of the Judges of that Court out of Court, by a general *Dedimus*, as also before Judges of Assize in Circuit, and by a special *Dedimus* directed to Commissioners in the Country: The Proceedings in either of these Ways we shall set down distinctly afterwards, taking some necessary and previous Observations and Instructions first with us.

1st, Take Notice, that it is at the Parties Election whether they will acknowledge a Fine in open Court, or before the Lord C. J. of the Common Pleas at his Chambers, or elsewhere out of Court, or before some Judge of the same Court; or before the Justices of Assize in the Country when they go a Circuit, by Virtue of a general *Dedimus*; or before Commissioners in the Country by Virtue of a special *Dedimus*.

2^{dly}, The usual Practice has been for the other eleven Judges, and in their Absence for a Serjeant at Law to take the Acknowledgment of a Fine, but their Power is by a *Dedimus potestatem*; yet their Persons are held in so high Esteem in the Eye of the Law, that the usual Practice has always been for them to take the Acknowledgment of a Fine without a *Dedimus* first sued out. But after the Fine is acknowledged, the Party is to sue out a *Dedimus*; whereupon they return the *Præcipe* and Concord by way of certifying in what Manner the Fine was acknowledged; so that the *Dedimus* is rather to ratify and make compleat what

before they had done for Expedition's Sake, and for the Ease of the Parties *nunc pro tunc*.

3dly, This Writ of *Dedimus potestatem* supposes the Parties, that are to acknowledge the Fine, are not able to travel to *Westminster* to acknowledge the same; and therefore Commissioners are authorized to take the Acknowledgment; and this they may do from them all together at once, or at different Times and Places, as they please.

4thly, If this *Dedimus potestatem* be to two jointly to do it, one of them in this Case ought not to do it alone; so if to three jointly, two of them ought not to do it, for it will be Error.

So Care must be taken of their joint and several Powers. So if one of the Conusors be one of the Commissioners, and he himself take it, it is Error.

Fitz. N. B. 146, 147. *Dyer* 220. 1 *Cro.* 249. By the 18 *Ed. 1.* Fines must be levied before the Court of Common Pleas; see *Co. 2 Inst.* 515.

*The Method, Manner and Form
how Fines are to be levied, ob-
tained and passed.*

And first, how to acknowledge a Fine at the
Bar in Court.

IF the Acknowledgment of the Fine is to be
in open Court, whereby the Client saves se-
veral Fees and Charges, which otherwise the
Caption would cost;

You must make out first your *Præcipe* in Pa-
per for the Curfitor, which *Præcipe* is but an
Abridgment or Abstract of the Writ of Cove-
nant.

The Form of the Præcipe of a Fine.

Devonsh. ff. **C**OMMAND *A. B.* That he justly,
and without Delay, perform
to *B. D.* the Covenant made be-
tween them, of one Messuage,
forty Acres of Land, sixty Acres
of Meadow, and seventy Acres
of Pasture, &c. with the Appur-
tenants in *R.* unless, &c.

The Writ of Covenant.

GGeorge the II^d, &c. To the Sheriff of Devon. Greeting: Command *A. B.* that justly, and without Delay, he perform the Covenant to *B. D.* made to him of one Messuage, forty Acres of Land, sixty Acres of Meadow, and seventy Acres of Pasture and Common of Pasture, with the Appurtenances in *R.* And unless he shall so do, and the said *A. B.* shall give you Security that his Suit shall be prosecuted, then summon by good Summoners the said *A. B.* and *B. D.* that they be before our Justices at *Westminster* in eight Days of *St. Hillary*, to shew wherefore they will not do it; and have there the Summons and this Writ.

Witness our Selves at Westminster the Ninth Day of June in the Tenth Year of our Reign.

Note; This is the usual Original Writ taken out by the Conusee or Conusees, against the Conusor or Conusors to the Fine; for without an Original Writ a Fine cannot be levied. See *2 Co. Inst.* 514. It is as it were the Title to the Concord, being placed before it in Nature of an *Exordium* or Introduction.

Yet, tho' a Fine is usually levied on a Writ of Covenant, it may be levied on a Writ of Right Close, or in any real Action, but not upon an Original in a Personal Action.

And

And tho' a common Action of Covenant is a Personal Action, in which Damages are to be recovered for a Breach of Covenant; yet this Writ of Covenant which demands the Land itself, is a real Action, and is brought to have an Execution and Performance of the Covenants, viz. to render the Land to the Conusee. 5 Co. 59. F. N. B. 146. See 2 Inst. 514. 1 And. 71. Kel. 90. 4 Inst. 407.

The *Præcipe* being made out on Paper by the Attorney who is to sue out the Fine, he must carry it to the Curfitor of the proper County where the Lands compromis'd in the Fine lies, who will make out the Writ of Covenant; and having received it from him sealed, then write a *Præcipe* and Concord thereof in Parchment.

Indorsements on the Writ of Covenant at the Alienation-Office.

William Freelove affirms for the Fine beneath, that the within Contents do not exceed the yearly Value of three Pounds.

William Freelove.

Pledges of Prosecution, { John Doe,
Richard Roe.

Summoners, { John Fenn,
Richard Fell,
William Rushout,
Charles Layley.

Orlando Johnson Esq; Sheriff.

The Concord.

THE Concord or Agreement between the Parties that intend the Levying the Fine, is that Instrument wherein is declared how and in what Manner the Things contained in the Writ shall pass. As the Writ of Covenant is the Foundation and leading Process, so this is the Substance of the Fine; the Form of it is thus:

The Form of a Concord.

AND the Agreement is such, (that is to say) That the said *A. B.* has acknowledged the said Tenements, with the Appurtenants, to be the Right of the said *B. D.* But the Forms of several Concords see among the Precedents afterwards.

In this Concord the Particulars or Parcels need not, nor is it usual to recite them over again, as they are inserted in the *Præcipe* for the Writ of Covenant, or any other Original Writ whereon the Fine is to be levied; and by these Words (the said Tenements) any Number of distinct Things or Parcels will be well enough expressed.

But if the *Præcipe* be of entire Things, as of a Manor or Manors with the Appurtenants, then you must express it thus in the Concord:

Concord.

AND the Agreement is such, that is to say, that the said *A. B.* has acknowledged the said Manor, or the said Manors, with the Appurtenants, &c.

Neither will the Word *Messuages*, named by itself in a *Præcipe*, pass by the Word *Tenements* in the Concord also.

So an Honour, Castle, Island, &c. must be particularly nam'd in the Concord as well as in the *Præcipe*; for the Manner of placing the Parcels.

The Writ of Covenant being made out for the Curfitor, and having received it from him sealed, the Commissioners of the Alienation-Office are next to be attended on, who will compound it for you; and after enquiring into the yearly Value of the Lands, which is generally done by Affidavit; if the Parcels are large, they will set with a Mark on the Back of it what Fine must be paid to the King for Leave to alien the Lands, and then you pay the Money to the Receiver, who attends there.

This Prefine to a Fine *pro licentia alienandi* is called in the Books of the Office, *the Fine for Alienation*.

And upon Receipt of the Prefine indorses the Writ, as you see before, P. F. that is Prefine 6 s. 8 d. then it is indorsed by two Commissioners, as before, entred in the Alienation-Office, and taken thence.

Obs.

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Observe; If it be in Term-Time the Commissioners sit at the Alienation-Office from nine till ten in the Morning to compound the Writs of Entry and Covenant, and for one Week after every Term. But if it be in the Vacation, then you must go to their Houses or Lodgings, and get it compounded; then carry with you the Composition Money to be entred by the Receiver.

See the History of the Alienation-Office, the End of *Bacon's Works*, last Edit. Vol. 3. pag. 549.

The Rule they go by, as to the Composition or King's License to alien, is mentioned as follows:

L And rated at forty Shillings or under pays nothing; but this I think is alter'd by the present Practice, of which you may be informed at the Office.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Above 40 s. to 3 <i>l.</i> pays —————	0	6	8
From 5 Marks and 20 s. to five } Marks and 40 s. }	0	10	0
Above 5 Marks and 40 s. unto } 10 Marks and 20 s. }	0	13	4

And so in like Proportion for all others.

<i>l.</i>	<i>s.</i>	<i>d.</i>		<i>l.</i>	<i>s.</i>	<i>d.</i>
5	6	8	pays —————	0	10	0
7	13	4	—————	0	13	4
					8	13 4

	l.	s.	d.		l.	s.	d.
8	13	4	pays	0	16	8	
10	0	0		1	0	0	
12	0	0		1	3	4	
14	6	8		1	6	8	
15	6	8		1	10	0	
17	13	4		1	13	4	
18	13	4		1	16	4	
20	0	0		2	0	0	
22	0	0		2	3	4	
23	6	8		2	6	8	
25	6	8		2	10	0	
27	13	4		2	13	4	
28	13	4		2	16	8	
30	0	0		3	0	0	

Common Pleas.

How to acknowledge a Fine at Bar.

THE Writ of Covenant being indorsed and entred by the Receiver, and so fitted for the Seal, then you must carry it sealed; and with the *Præcipe* and Concord annex'd wrote on Parchment deliver them both to one of the Serjeants at the Bar, the Conusors being also present; then the Serjeant will desire the Judge to record the Appearance, which being granted, the Serjeant says the *King's Money*; then answers the second Prothonotary or his Clerk *What will he give?* then the Serjeant will answer thus: *What he pleases to have?* Then the second Prothonotary or his Clerk answers again, *Draw this Agreement*; then the Serjeant will say, *With your Leave*, or *May it please*

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please you. The Agreement is such, reciting the Substance of the Concord, with Relation to the Lands in the *Præcipe*.

Observe; If any of the Conusors in a Fine be a Feme Covert, she must go up to the Puisne Judge to the Bench, to be examined of her Consent, whether she is willing to pass the Fine; which Judge takes the Concord so written in Parchment, and then delivers it to the Prothonotary to be recorded.

The Ceremony of the Serjeant reciting the Substance of the Caption is now omitted.

The Caption being past, and after being recorded, you must pay the Fees of the Court, and then take up the *Præcipe* and Concord, and annex thereto the Writ of Covenant, and pass it through the several Offices, as here is afterwards set down in the Manner of suing out a Fine before the Lord Ch. Just. of the Common Pleas.

Attorney's Bill of Charges of the Fine acknowledged at the Bar.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR drawing <i>Præcipe</i> and Concord	0	3	4
For the Writ of Covenant	0	2	6
For the Return of the same	0	2	0
Serjeant at Law	0	3	4
To the Secondary	0	1	2
To the Cryer, Tipstaff and Court- Keeper.	0	1	6
To the Porter	0	0	4
For the Fine			

To

Fines and Recoveries.

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	<i>l.</i>	<i>s.</i>	<i>d.</i>
To the Receiver —————	0	0	6
Entry and Indorsement —————	0	0	6
Doctor's Hand —————	0	0	4
Warrant of Attorney, and Filing it	0	0	3
<i>Custos Brevium</i> 3 <i>s.</i> 8 <i>d.</i> Clerk of } King's Silver 1 <i>s.</i> 4 <i>d.</i> }	0	5	0
Chirographer 6 <i>s.</i> 2 <i>d.</i> Ingross, In- } denture of the Fine 3 <i>s.</i> 6 <i>d.</i> }	0	9	8
For the Fee —————	0	6	8
The Fine —————			
To the Receiver —————	0	0	6
Entry and Endorsement —————	0	1	6
Doctor's Hand —————	0	0	4
Warrant of Attorney, and filing it —	0	0	8
<i>Custos Brevium</i> —————	0	3	8
Clerk of the King's Silver ————	0	1	4
Chirographer —————	0	6	2
Ingrossing the Indenture of the Fine	0	3	6
For the Fee —————	0	6	8

*Charges of a Fine acknowledg'd by
Dedimus potestatem before a
Judge, and exemplify'd.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
D rawing the <i>Præcipe</i> and Concord	0	3	4
To the Judge for his Fee ————	0	9	8
To the Clerk for Return of the <i>Dedi-</i> } <i>mus</i> and ingrossing the Concord }	0	2	6
Writ of <i>Dedimus potestatem</i> ————	0	9	2
For all other Fees, as in the next pre- ceding for the several Fees.			
For the Exemplification ————	0	2	8
For			

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the Exemplifying —————	0	5	6
For the Seal thereof —————	0	2	2

Charges of a Fine by special Dedimus taken before Commissioners.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR drawing the <i>Præcipe</i> and } Concord —————	0	3	4
For the special <i>Dedimus potestatem</i> —	1	4	2
For the Return —————	0	3	0

The Charges of acknowledging a Fine before the Lord Ch. Justice.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR drawing the Concord —————	0	3	4
Lord Ch. Justice's Fee for Ac- } knowledgment —————	0	10	4
His Clerk for ingrossing the Concord	0	1	4
The Writ of Covenant —————	0	2	6
The Return —————	0	2	0
For the Fine —————			
The Receiver for making the Writ } of Covenant —————	0	0	8
Entry and Indorsement —————	0	1	6
The Doctor's Hand —————	0	0	4
The Warrant of Attorney, and filing it	0	0	8
To the <i>Custos Brevium</i> —————	0	3	8
The Clerk of the King's Silver —————	0	1	4
The Chirographer —————	0	6	2
Ingrossing the Fine —————	0	3	6
Attorney's Fee —————	0	6	8

Charges

Charges of a Fine acknowledg'd at Bar.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
D rawing the <i>Præcipe</i> and Concord	0	3	4
Writ of Covenant	0	2	6
Return of the same	0	2	0
Serjeant at Law	0	3	4
Secondary	0	1	2
Cryer, Tipstaff, and Court-Keeper	0	1	6
Porter	0	0	4

The Method of suing forth and obtaining a Fine before the Lord Ch. Justice at his Chambers, or elsewhere before him out of Court.

And how the same is to be passed through the several Offices of the Court.

YOU first draw your *Præcipe* and Concord fairly on Parchment, and another on Paper, to which the Parties must subscribe their Names; and for more Dispatch, ingross a Duplicate thereof on Parchment, which the Parties need not sign: The Form of which is as follows.

Devonsh. ss. Command *William Jones* that he justly, and without Delay, perform to *Richard Roe* the Covenant made between them of a Messuage, two Gardens,

Gardens, twenty Acres of Land, ten Acres of Meadow, and ten Acres of Pasture in S. and unless.

Concord.

AND the Agreement is such, (to wit) That the said *William* hath acknowledged the said Tenements, with the Appurtenances, to be the Right of him the said *Richard*, as those which the said *Richard* hath of the Gift of the said *William*, and those he hath remised and quit-claim'd from him and his Heirs to the said *Richard* and his Heirs for ever. Moreover, the said *William* has granted for himself and his Heirs, that they will warrant to the said *Richard* and his Heirs the said Tenements, with the Appurtenances, against him the said *William* and his Heirs; and for this, &c.

Note; The Words, against the said *William* and his Heirs, signify, that they will warrant the said Tenements against any Claim to the same to be made by the said *William* and his Heirs: And the Meaning of these Words, and for this, &c. is, that for the Acknowledgment of this Fine, a Sum of Money, which is supposed to be the Consideration of the Agreement, given by the Conusor to the Conusee, is true Sterling Money.

The Manner of acknowledging a Fine before the Lord Ch. Justice at his Chambers, or elsewhere before him out of Court.

THE *Præcipe* and Concord being ingrossed, write the Caption underneath the Concord thus:

Taken and acknowledged on the first Day of *June* in the tenth Year of the Reign of his present Majesty *Geo. the Second, King of Great Britain, &c.* as before.

And the Conusor or Conusors must subscribe his or their Name or Names on the Right Hand under the Paper Concord. Also somebody, that knows the Parties, must signify such his Knowledge at the Bottom thereof thus:

A. B. knows the Parties;

The *Præcipe* and Concord, with the Caption wrote, and the Parties Names subscribed underneath the Paper Concord, as before directed; then bring the Conusor or Conusors, that are to acknowledge the Fine, to my Lord's Chambers, and deliver the *Præcipe*, on Paper or Parchment, to my Lord's Clerk, who

E

will

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will enquire of him that comes with the Parties to the Acknowledgment of the Fine, if he knows them, and see that he or they subscribe to the Fine, as aforesaid; then the Clerk will read it to the Parties in the Presence of my Lord, and their Hands being to it, they acknowledge it before my Lord; then my Lord will set his Hand to the Caption of the Concord ingrossed on Parchment, and also to the Copy thereof on Paper, which is to remain with my Lord's Clerk of the Fines, with the *Præcipe*.

The Fee of my Lord Ch. Just. is 11 s. 8 d. which being paid to my Lord's Clerk, after the Acknowledgment, the Clerk will afterwards take the *Præcipe* and Concord in Parchment, and get my Lord's Hand to it, which the Attorney that sues out the Fine must fetch away.

This being done, the Attorney must carry the Concord in Parchment to the proper Curator of the County where the Lands lie, and leave them there, and then bespeak a Writ of Covenant; which being obtain'd, he must carry it to the Alienation-Office, as before, under Seal, and give it to the Commissioners, and they will compound and make it easy for the Parties, according to the Method set down before, (which, as has been said, is generally determined by Affidavit, if the Parcels are large;) that is, they will indorse with a Mark on the Back of it, what Fine you shall pay to the King for Leave to alien those Lands, and then the Attorney pays the Money to the Receiver: Which, when done, you leave it at the Alienation-Office to be passed there, by certifying and enter-

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entering the Names, Parcels, &c. in the Books kept for that Purpose; then the Clerk of that Office gets the proper Hands indorsed thereon, which must be signed by two of the Commissioners, and so likewise indorsed by the proper Officer for that Purpose, in Manner as before said.

And in Case there has been a former Fine, and if you have it not, to know the Term when it was, in Case you inform them the Value, there is one that sits purposely with the Commissioners to take it, who was formerly a Doctor; you must by Entreaty, Persuasion, or otherwise, get the Fine to be set at as low a Rate as possibly you can, which is the Money for a Licence to alien, which is the King's Silver; which Licence the Clerk of the King's Silver entereth; and when the Money is paid, the Receiver will set his Hand to the Back of the Writ, and then give it to the Doctor to sign, for which he has four Pence; then get the Hands of the two Commissioners to the Back of the Writ; which done, you must carry it to the Clerks there sitting, to be endorsed and entered. When this is performed, you bring back your Writ to the Cursitor, and he will get it sealed, and then you pay him the Fee of two Shillings and Six-pence: Then having broke it open, it must be carried to the Clerk of the Warrants and Inrollments, commonly called the Return-Office, in *Symond's Inn*.

Mr. *Johnson* at Prothonotary *Borret's* Office,
King's-Bench Walks, (who is Deputy on Record

for all the Sheriffs in *England*) he returns the Writ of Covenant in the Name of the Sheriff, before

Pledges of Prosecution, { *John Doe,*
 { *Richard Roe.*

Summoners, { *John Denn,*
 { *Richard Fenn.*

Henry Houghton Esq; Sheriff.

For which the Attorney pays the Clerk 2 s. He enters it in his Book, and sets his Stamp on the Back of the Writ.

In this Office the Attorney, the Suer out of the Fine, files his Warrants of Attorney for the Plaintiff with the Clerk of the Warrants, where your Writ of Covenant must be signed in this Manner :

Devonsh. ff. John Stiles puts in his Stead *William Handsaw* his Attorney, to prosecute a Writ of Covenant against *Richard Roe*, of Lands and Tenements in the *Southams* in the County afore said.

Note ; If it be of Lands in *London* or *Middlesex*, you must carry a Note of the Parcels and But-tals, Signs and Tenants Names.

The next Step to be taken, in order to the further perfecting the Fine, is to annex and file the Caption and Writ of Covenant (and *Dedimus*, if any) together, which you had from the Lord Chief Justice's Clerk, and carry the same to the *Custos Brevium*, Numb. 3. *Brick-Court* in the *Middle-Temple*, (but see) who endorses and stamps the

the Writ and Caption, and leave them with him; and they make an Extract of the Fine, by making an Entry of the Plaintiffs and Defendants Names, and of the Place where the Lands lie, and in their Books kept for that Purpose, and the Caption is endorsed as follows: viz. Proclaim'd Hill. 10 Geo. 2. the Word *Ent.* for enter'd is set at the Bottom of the Writ near the Curfitor's Name. This being over, fetch them from him, and pay him for the same 3 s. 8 d.

And if it be before the Effoin-Day of another Term, you pay 20 d. more, and so 20 d. a Term for a *Post Termin'* of every Term before the first Post-Fine, or Fine *pro licentia Concordandi*.

Having done with the Office of *Custos Brevium*, and the Fine passed here, the next Place it must be convey'd to, is the King's Silver Office in *Crown-Office Row* in the *Inner Temple*, and there they make an Entry of the Writ of Covenant, the Day of the Caption, and the Fine to the King, or the King's Silver, the Attorney compounded and paid before at the Alienation-Office; the Form of which you may see before in the Roll in the King's Silver Office, among the Plea Rolls of any Term at *Westminster*; and they also deliver Duplicates of their Entries to the Clerk of the Warrants and Inrollments, in order for him to enter the same upon Estreat Rolls, which, the last Day of every Term, are by the Puisne Judge of the *Common Pleas*, with the said Clerk of the Warrants, carried up into the *Exchequer*, in order for Process to the several Sheriffs of the respective Counties where the Lands lie, to collect or levy the Post-Fines, or the Fine *pro Licentia Concordandi*; which is

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always as much, and half as much as the Pre-fine.

Note; If any Rasure appears in this Office in the Caption, the Officer refuses to receive the Fine, till an Order from the Court of *Common Pleas*, or one of the Justices thereof; or if a Year be lapsed since the Date of the Caption, he refuses to receive the Fine, till an Affidavit is filed that the Parties are living.

He is the first Officer that enters the Fine upon Record, which he does in this Manner.

Devonsh. ff. M. C. gives to our Sovereign Lord the King 10 s. for Licence to accord with R. M. and M. his Wife, in a Plea of Covenant of three Messuages, &c. (inserting all the Parcels and Vills) and he hath the Chirograph allowed before Sir *Cha. Wille* Knt. Ch. Just. of the Common Bench the first Day of *March* in the tenth of King *George* the Second. If before Commissioners, the Entry is before *J. K. W. G. C. L.* and *M. N.* Gent. by Commission; he also enters the Fine in his Book, and endorses the Writ of Covenant, as before. *Hill. Term 10 of King Geo. 2* 4th Roll, Post-fine 10. s. and sets his Stamp thereon.

Note; After the Fine is taken from the *Custos Brevium*, and before it is carry'd to the King's Silver Office, it must be taken back to the Cursitor, who writes at the Bottom of the Writ

Writ of Covenant (paid for the Fine 6 s. 8 d. as before.)

And to the Sum set by the Commissioners, or Composition Money at the Alienation, is generally added one Fifth of the yearly Value of the Lands, and two Shillings in the Pound for the Sum set in the Pre-fine; so if Lands are 100 l. a Year, the Sum set is 20 l. and the Pre-fine, or Fine *pro Licentia Alienandi* 40 s. but Marks being mix'd with Pounds in the old Computation, some small Difference is occasioned thereby.

Note; The Post-fine becomes due on the Licence to accord, although *ex Gratia Regis* Payment thereof is not immediately required, but is afterwards levied as before said. See *Rules and Orders concerning Fines* in the End.

The Fine being now passed the King's Silver Office, and fetch'd away, it must be deliver'd by the Attorney, *viz.* the Writ of Covenant and Caption annexed to the Secondary in the Chirographer's Office in *Hare-Court*, who examines the Fine, and enters it in his Book, and he must pay for the same in Term-Time 5 s. 8 d. and in Vacation 6 s. 2 d. and if it be of another Term, he must pay there 20 d. more for a *Post Terminum*, which he has for allowing the Proclamation of the same Term he proclaims it in Court, and enters it on the publick Roll at *Westminster*, and delivers it to the proper Clerk or Chirographer in the same Office, who is appointed to write for that Shire where the Lands lie; he has for engrossing it 3 s. 6 d. and 3 s. 6 d. more, if exemplified. This is called *Tabling of Fines engrossed*.

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This last Officer makes out two Indentures thereon, one for the Conusee or Conusees, or Plaintiff, the other for the Conusor or Conusees, or Deforciant; for these two Indentures you pay according to their Lengths.

He makes up two Records, one call'd the Note of the Fine, which, with the Writ of Covenant, is filed by the Chirographer; the other the Foot of the Fine, so called as being the last Part, which, with the Caption and *Dedimus*, if any, is deliver'd to the Chirographer by the *Custos Brevium*, to be filed by him.

When your Fines are engrossed, which are by Indenture, deliver them to your Client to keep.

The Attorney, in making his Client's Bill, takes 6 s. 8 d.

The Charges of a Fine acknowledg'd before the Lord Ch. Justice at his Chambers, or elsewhere before him out of Court.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
FOR drawing the Concord ———	0	3	4
For my Lord Ch. Justice's Fee } for Acknowledgment ——— }	0	10	4
For his Clerk for engrossing the Con- } cord ——— }	0	1	4
For Writ of Covenant ———	0	2	6
For the Return ———	0	2	0
For the Fine ———			
The Receiver for making Writ of } Covenant ——— }	0	1	8
The Entry and Endorsement ———	0	1	6
	Doctor's		

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Doctor's Hand —————	o	o	4
For the Warrant of Attorney, and filing —————	}	o	o
To the <i>Custos Brevium</i> —————	o	3	8
To the Clerk of the King's Silver ———	o	1	4
To the Chirographer —————	o	6	8
For engrossing the Fine —————	o	3	6
The Attorney's Fee —————	o	6	8

*Of what Things, and by what Names,
and in what Form the Particulars
or Parcels in a Fine are to pass
and be placed.*

In the Manner of placing Things in Fines,
observe as follows:

1st, **T**HE more worthy Things are, according to the natural and establish'd Order of Things, placed first; as a Messuage before Land, a Manor before a Messuage, and a Castle before a Manor.

2^d, Things general before special, as Land, being the General or Genus to Meadow, Pasture, Wood, &c. is to be placed before them; and Wood, as being more general and extensive than Wood Grounds, as Alder or Willow Wood Grounds, and therefore to be set before them in the Writs.

3^d, Entire or whole Things are to be set before their Parts, as of the Manor of *T.* and of the Moiety of the Manor of *H.*

4th, Parts of Things excepted must succeed those Things out of which they are excepted;
and

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and if there be divers Parcels in a Writ, that Parcel out of which the Exception is to be made, ought to be last placed. *Regist. fol. 6.* As of the Manor of *T.* with the Appurtenances in *B.* except one Messuage, two Acres of Lands, and the Advowson of the Church of *C. &c.* and every Thing excepted ought to be certainly named, but it need not be said, with the Appurtenances, after the Thing excepted. *40 Ed. 3. 25.* And the Execution must always be of such Things whereof the Writ will lie. *Regist. 228, 229.*

And strict Regard must be had to the Place where the Lands lie, as the Shire, Town, Parish, Hamlet, for a Fine is good in a Hamlet; but it is good and proper to name the Hamlet, and that with the Addition, for Distinction sake, if there be more of the same Name. See *Stock and Foxell's Case, 2 Cro. 120.*

And note, That a Fine may be levied of all Things whereof either a *Præcipe quod Reddat*, or *Præcipe quod faciat*, or a *Præcipe quod permittat*, or a *Præcipe quod teneat* lieth, it may be levied of Things Ecclesiastical or Temporal, and that are inheritable and in *esse* at the Time of levying the Fine.

A Fine levied of Ancient Demesne Lands will not be good, nor void, but voidable by Error. *1 Stat. 32 H. 8. c. 7, 8.*

Note also, That many of one Sort may be granted, as 60 Messuages, 50 Tofts, 600 Acres of Land, and 40 Shillings of Free Rent, as Occasion requires.

Demefnes, Rents, Services, Seigniories, Courts, Pleas, &c. whereof a Manor consists; these

these pass by the Name of a Manor, with the Appurtenances.

Observe, that the Nature and Quality of the Parcels must be taken notice of, as Land, Meadow, Pasture.

Farther, that where the original Writ is of many Things, expresses them thus:

1st, Of a Manor. 2^{dly}, Of a Rectory. 3^{dly}, Moreover of a Messuage. 4^{thly}, And also. 5^{thly}, Furthermore. For the 6th, And further. For the 7th, And also. And for the 8th, And moreover: If more, then to begin so again.

Certain and apt Words must be used to express the Things to pass by the Fine, because a Fine levied of a Tenement or Hereditament, or two Tenements, intending to pass one or two Houses, is voidable by Error, because of the Uncertainty and Ineptitude of the Words. 1 Cro. 196. Leon. 188. For the proper Words to call them by, are one or two Messuages.

And it often falls out that one Manor may be Parcel of another, and pass by the Name of that Manor, or the Manor of which it is Parcel. 20 Aff. pl. 54.

The same may be said of a Castle, Honour, Hundred; all pass by the Name of Manor, or its own Name. 1 Ed. 3. 4. 2 Ed. 3. 36. 20 Aff. pl. 54.

A Hundred may be demanded of itself, as of the Hundred of B. 27 H. 6. 2.

Then see the Rule in the *Regist.* and for the placing of the Parcels, 'tis in all Things as in a *Præcipe quod reddat* of Lands.

A Fine may be levied of an

Honour.	Dovehouse.
Manor.	Garden.
Island.	Orchard.
Barony.	Land.
Castle.	Felons Goods.
Messuage.	Deodands.
Cottage.	Hospitals.
Meadow.	Furzes.
Pasture.	Heath Ground.
Wood.	Rent.
Chapel.	Common.
River.	Hundred.
Chantry.	Way.
Parsonage.	Ferry.
Rectory.	Franchise.
Advowson.	Seignory.
Vicarage.	Reversion.
Tithes impropriate.	Toll.
Estovers.	Picage.
Foldage.	Pontage.
Corody.	Acquittal.
Office.	Serviees.
Fishing.	Portion of Tithes.
Warren.	Oblations, and the like.
Fair.	Toft.
Mine.	Moorish Ground.
View of Frank-pledge.	Marsh Lands.
Waif.	Edder-wood.
Stray.	A Fishery.
Mill.	Suit.
Loft.	Priory.
Curtilage.	

N. B.

N. B. If the *Præcipe* be of entire Things, as of a Manor or Manors, with the Appurtenances, then write it thus:

And the Agreement is such, that is to say, that the said *B.* hath acknowledged the said Manor, or the said Manors, with the Appurtenances, &c.

Neither will Messuages named by themselves in a *Præcipe* pass by the Word Tenements in the Concord. Also,

An Honour, Castle, Island, Barony, Hundred, Borough, Knights Fee, the Scite of a Manor, Park, a Prebendary, a Rent, Common Oblations, Stallage, Pontage, View of Frankpledge, a Liberty, Franchise, Office, Bailiwick, Fair, Market, Passage, the Moiety or Part of an entire Thing, Wreck of the Sea, Advowson of a Church, must be particularly named both in Concord and *Præcipe*.

And note; If a Manor extends itself into divers Towns, as *D. E. F.* it is the best and safest Way to name all the Towns, or none of them at all, as of the Manor of *R.* in *D. E. F.* or of the Manor of *R.* with the Appurtenances; for if any one of the Towns be omitted, none of the Manor of that Town will pass: But it seems, that if the Manor be only named, and not said in what Town it doth lie, the Fine may be good. 9 *Ed.* 4. 6.

Also, where divers Manors be of one Name, with Distinction of *North* and *South*, it is good in all the Proceedings of the Fine to express which of the Manors are intended to be passed. 1 *Cro.* 196.

When a Fine is but for the Presentation to a Church only, it must be of the Advowson of the

the Church of R. and not with the Appurtenances; and of Vicarages endow'd, the Writ must be of the Advowson of the Church of R. and not with the Appurtenances; and when the Vicarage is not endow'd, it must go under these Words:

Of the Advowson of the Church of R. and Parsonages, Rectories, Advowsons, Vicarages, and Tithes impropriate pass not by the Words of the Advowson of the Church of R. but by this, of the Rectory of the Church of R. *West's Symb. 2 Part, Tit. Fines.*

An Advowson will pass the Presentation either to a Vicarage or Rectory, and then it is by the Words, Advowson of the Rectory, or Vicarage of the Church, (as the Case is.)

High-wood and Under-wood pass by the general Name of Wood, as of 20 Acres of Wood. *West's Symb. 2 Part, Ibid.*

Houseboot, Hayboot, and Plowboot, by the Name of Estovers, as of reasonable Estovers in Wood; (that is to say) in ten Acres of Wood of the said C. in D.

A Fishery may pass by the Name of a separate Fishery in the River of R.

A Foldage may pass by the Name of the Liberty of a Foldage and Sheep-Course, with the Appurtenances in E. or of a free Foldage of Sheep, with the Appurtenances in E. or of a free Fold-Course.

A Chapel or Hospital will pass by the Name of a Messuage. 13 *Aff. 2.*

So by the Name of a Messuage, with the Appurtenances, a Fine may pass a House with a Shop, Curtilage, Garden, Orchard; also a Dovehouse

house and a Mill, as Parcel thereof. *Bract. lib. 5. cap. 28.*

So by the Name of a Cottage, a Loft, a Chamber, a Cellar, &c. may pass, as also by their own single Names.

Part of an entire Thing may pass by the Words of a Moiety, or third Part, or of two Parts in three to be divided, as the Case is; so of a Moiety of all the Tithes of Corn and Hay of the Lands of C. with the Appurtenances in K. or the Moiety of an Advowson, which is the Right of presenting alternately: So if a Messuage and 26 Acres of Land be parted, the Part divided may pass by the Name of one Messuage and ten Acres of Land, and not by the Moiety of a Messuage, and 26 Acres of Land.

A Fine of a Mill is good, whether Wind-mill or Water-mill.

Land may be demanded by a certain Number of Acres, as of ten Acres of Land, twenty Acres of Meadow, &c. or by the certain Measure of the specifick Quantity thereof, as of a Hide, a Rood, or the Parts thereof.

So likewise with Regard to Wood, Underwood, Heath, Moorish, and Marsh Grounds.

Turbary may be demanded by the Name of Moorish Ground; Rent may be by the Quality of the Things to be render'd, with the particular Quantity, as ten Pounds, ten Marks, &c.

N. B. In fine, rather more Number of Acres are inserted, than are intended to pass.

It has been said, that Fines may be sued out, and passed before the Chief Justice of the *Common Pleas*, either at his Chambers out of Court, or before him in Court: And in the Court

Court of *Common Pleas*, when two Judges are sitting, and also the Judges of both Benches, and the Barons of the *Exchequer*; and in their Absence, a Serjeant at Law is qualified to take Conuſance of Fines by a general *Dedimus*; and these Persons are held in so high Esteem in the Eye of the Law, as aforesaid, that though their Power is by a *Dedimus*, yet the usual Practice is for them to take the Acknowledgment of a Fine without a *Dedimus* first made out, and after the Fine is acknowledg'd, the Party is to sue out a *Dedimus*; whereupon they return the *Præcipe* and Concord, by way of certifying in what Manner the Fine was acknowledg'd.

Fines also may be acknowledged before Commissioners in the Country, which is a common Way of acknowledging them, by reason the Parties most commonly live there; and then the Business is done by a special *Dedimus*, enabling the Commissioners to take the Acknowledgment, supposing the Remoteness of the Parties from *London*, or that through Debility, or other Occasions, they are not able to attend at *Westminster*; and thus to acknowledge a Fine, you must proceed as follows.

*The Manner of acknowledging a Fine
before Commissioners by special De-
dimus.*

FIRST draw the *Præcipe* on Paper, as a Note or Instructions for the Curſitor of the Shire where the Land lies, to make a special *Dedimus*, and there you may bespeak your
Writ

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Writ of Covenant; but this is usually let alone till your *Dedimus* is return'd on your *Præcipe* in Paper; insert the Commissioners Names after this Manner:

Devonsh. to wit.

Command *William C. Gent.* and *E.* his Wife, that they justly, &c. hold to *C. D.* the Agreement, &c. of one Messuage, one Garden, &c. with the Appurtenances in *F.* unless, &c.

J. S. Knt. }

T. B. }

R. O. }

N. M. }

and

G. W. }

Observ. One of the Commissioners must be a Knt. and the rest Men of known Ability, Integrity, and Understanding, and 4 in Number.

This being done, the Cursitor will make out your *Dedimus*, and get it sealed, for which you must pay 24 s. and 2 d. And in paying him, (for he takes for them all) you pay a Fine, and for a Judge's Hand, and for the Chancellor or Keeper's Hand, which Hands must be had before it be sealed.

Having got it sealed and delivered by the Cursitor, then deliver the *Dedimus* and Seal to the Commissioners, with the *Præcipe* and Concord ingrossed on Parchment before any two of the Commissioners named in the *Dedimus*.

When the Parties come to acknowledge it, the Conusors are to set their Hands under the Concord on the Right Hand Side; then the Commissioners are to read to the Parties the Substance of the Fine, and to ask them if they

F

are

are willing to pass the same; which they agreeing to, and having made Recognizance accordingly, the Caption is to be wrote under the Concord on the left Side thereof, as follows.

The Caption.

TAKEN and acknowledged the Thirtieth Day of *March* in the Tenth Year of the Reign of his present Majesty *George the Second*, King of *Great Britain*, &c. Before us

J. S. Kt.

A. B. &c.

The Acknowledgment being now taken, the Commissioners must return the *Dedimus* indorsed thus:

The Execution of this Commission appears in a Schedule hereto annexed.

Then fixing the Concord to the Back of the *Dedimus*, the Commissioners must set their Hands to the Caption, as before, and also to the *Dedimus* under the Return thereof; and this finishes the Acknowledgment of the Fine.

When the Fine is thus acknowledged, and the *Dedimus* and Concord returned, carry it to the proper Cursitor, and he will make out the Writ of Covenant; and then pass the Fine as before directed, as in all other Fines through the several Offices.

And *Note*, That one of the Commissioners, or some other Person who saw the Fine duly taken, must make Oath thereof before a Judge
of

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of the Common Pleas, whose Clerk writes thereon an *Allocatur*, which is signified by the Judge, *viz.*

Upon the Oath of *A. B. Gent.* (one of the Commissioners) of the due Execution of this Fine,

Let it pass.

A. D.

But if it be a Fine of the preceding Term, your best way is to have a Writ of Covenant at the same Time; for if the *Dedimus* is not taken and returned in Time, you will be under the Necessity and Expence of petitioning the Master of the Rolls for a Writ of Covenant returnable the preceding Term.

Note; The Commissioners are to return their *Dedimus* with the Concord annexed, within one Year next after the taking the same Connuance at farthest; and if they refuse to return or certify this, the Party grieved by it may by a Writ called *Cognitionibus Admittendis*, or a *Certiorari*, compel the Commissioner that hath it in his Custody, or his Executor or Administrator, if he be dead, to certify it. *Stat.* 23 *El. c. 3.* *Dyer* 220, 246, 320. *F. N. B.* 147. 5. *Co.* 39.

Charges of a Fine by a special Dedimus before Commissioners.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR drawing <i>Præcipe</i> and Concord	0	3	4
Special <i>Dedimus Potestatem</i> ———	1	4	2
The Return —————	0	3	0

● For the rest of the Fees they differ little from what are on Fines otherwise acknowledged.

Of Acknowledging a Fine before a Judge out of Court by a Dedimus Potestatem.

IN this Manner of Acknowledgment you are to proceed in passing the Writ of Covenant through the Alienation-Office as before directed; which being done, and your Writ delivered back to the Cursitor of the proper County, you must bespeak a *Dedimus Potestatem* of the Cursitor; and when you have your Writ of Covenant and *Dedimus Potestatem* under Seal, you are to deliver the *Dedimus* to the Judge's Clerk of the Fines, and he will indorse the Concord, and return the *Dedimus*, getting the Judge's Hand to the same; which *Dedimus* so returned, Concord and Writ of Covenant, you must annex together, and pass through the Return Office, Clerk of the Warrants, *Custos Brevium*, Clerk of the King's Silver, and Chirographer's Office, in like Manner as before

before directed, the Course of Proceedings being all one in this Case.

The Charges of Acknowledging a Fine before a Judge out of Court, and exemplified.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
FOR drawing the <i>Præcipe</i> and } Concord.	0	3	4
Judge's Fee —————	0	9	8
To the Clerk for the Return of } the <i>Dedimus</i> , and ingrossing the } Concord	0	2	6
Writ of <i>Dedimus</i> —————	0	9	2

For all the rest, as in the preceding Part before Commissioners.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For the Exemplification —————	0	2	8
The Exemplifying —————	0	5	6
For the Seal thereof —————	0	2	2

In the Acknowledgment of a Fine before one of the Judges at the Assizes.

YOU must leave the *Præcipe* and Concord acknowledged with the Judge's Clerk, and when the Judge comes to Town, bespeak of the Cursitor of the County a general *Dedimus*, to be directed to that Judge, and his Clerk.

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will return the Substance of the Concord on the Back of the *Dedimus*; then get a Writ of Covenant and compound it, and pass it through the Offices as before, with the *Dedimus* annexed, before you go to the *Custos Brevium*.

Rules and Orders concerning Fines.

TO prevent passing Fines acknowledged by Infants, it is ordered that all Forms relating thereto be renewed. *Hill.* 28 & 29 *Car.* 2. *Mill's Rules and Orders* 65.

Rules and Orders of C. B.

Term. Pasch. Anno Sexto Gulielmi & Mariæ, &c.

London and Middlesex. **U**PON Complaint of the Secondaries of the Compters of *London* and Under-Sheriff of *Middlesex*, of Fines passed by Attornies, &c. who either cannot, or will not give a true Account of the Lands, and of the Tenants, &c.

So that it is very difficult to find out the Lands, &c. and to collect the Post-Fines due to the Crown.

Ordered, That no Writ of Covenant upon any Fine of Lands, &c. within the City and Liberties of *London* and County of *Middlesex*, tho' joined with Land, &c. in any other City
or

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or County, shall pass the Return-Office, until a Note of all Particulars be delivered, and of the Tenant in Possession, and who is to pay the Post-Fine thereon.

Clerk of the Return-Office and his Deputy to see this Order duly executed.

And carefully to keep the Notes.

And to let the Secondary's Under-Sheriff have a true Account thereof.

This Order made a Standing Rule of Court.

Pasch. 9 Anna Regina.

For preventing the Mischiefs arising from Rasures, made in the Days and Years of the Captions of Fines.

WHereas by an Act made in the Twenty-third Year of the Reign of Queen Elizabeth, it was among other Things enacted, That every Person, that should at any Time hereafter take the Knowledge of any Fine, and should certify the same, that such Person should with the Certificate thereof certify also the Day and Year when the same was acknowledged; and that no Person, who should take any such Knowledge of any Fine, should be bound, or by any Means enforced to certify any such Knowledge, except it were within one Year next after the said Knowledge taken. And that no Clerk or Officer should receive any Writ of Covenant, whereupon any Fine was thereafter to pass, unless the Day of the Knowledge of such Fine should appear in or by

such Certificate, upon Pain of forfeiting five Pounds. And whereas, contrary to the Intent and Meaning of the said Statute, the Days and Years of the Captions of several Fines have been rased and alter'd after the same have been acknowledged, and other Days and Years inserted; and which sometimes have appeared to be after the Deaths of the Conusors of the said Fines, by Reason whereof several Disputes have arisen, great Delays have been had in the Passing such Fines, and that several Fines have been vacated thereupon. Now, for the Prevention of the like Mischiefs and Inconveniencies for the Time to come, it is ordered by the Justices of this Court, That for the Future no Fine whatsoever taken and acknowledged before Commissioners, by Virtue or Colour of any special *Dedimus Potestatem* to them directed, do pass the Queen's Silver-Office, and the Queen's Silver of such Fine be recorded, unless Oath be made before the Lord Ch. Just. or some other Justice of the Court, of the due Execution of the said Fine; and also of the Day and Year when each Conusor sees the same executed, where a Rasure in the Day or Year shall appear in the Caption thereof; and that no Fine so acknowledged before such Commissioners, in Case of such Rasure, be received and entred by the Clerk of the King's Silver of this Court before there can be an *Allocatur*, reciting the Day and Year of each particular Conusor's Acknowledgment, under the Hand of the said Ch. Just. or some other Justice of the Court, for the Passing the said Fine first had and obtained. And it is further ordered, that no Fine whatsoever, taken and acknowledg'd
be-

before the said Lord Ch. Just. or any Judge of Assize or Serjeant at Law, if the Date of the Caption of such Fine shall appear to have been rased, do for the Future pass the Queen's Silver-Office, and the Queen's Silver of such Fine be recorded by the said Clerk of the Queen's Silver, before there be an Order under the Hand of the said Lord Ch. Just. or some other Justice of this Court, for his Passing and Entering such Fine, first had and obtained. And it is likewise ordered, That after any Fine whatsoever shall have passed the Queen's Silver-Office, and Queen's Silver of such Fine be recorded, that neither the *Præcipe* nor Caption of any such Fine or Writ of *Dedimus Potestatem*, or Writ of Covenant, by which any such Fine be passed, shall be rased or altered before there be an Order under the Hand of the said Ch. Just. or some other Judge of the Court for the doing thereof, and for the Amending of all Entries made from such Writ or Writs. *Per Cur.*

T. Trevor,
J. Blencow,
R. Tracy,
R. Dormer,

Hillary 13 King George I.

IT is ordered, That no Fine whatsoever taken and acknowledged before any Commissioners, by Virtue of any Writ of *Dedimus Potestatem* to them directed, be allowed to pass, unless some Person present when such Fine was allowed

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allowed to pass, taken and acknowledged, do personally appear before the Lord Ch. Just. or some other Justice of this Court, and be examined upon Oath touching the due Execution thereof, and particularly whether such Person knows the Parties acknowledging such Fine.

R. Eyre,

Ro. Price,

F. Page,

Alex. Denton.

Concerning stopping of Fines, it is order'd that all such Caveats and Orders for stopping Fines shall be renewed every Term, and Copies thereof left with the Clerk of the King's Silver, for which he is to demand his ancient Fee of 3 s. 4 d. the Term, as aforesaid; and in Default thereof, all Caveats that shall not be so renewed shall lose their Force, and be void. *Pasch. 29 Car. 2. Mills's Rules and Ord. 66.*

See an Order for the better paying of Post-fines in *Middlesex. Term Pasch. 6 W. & M. Mills 117.*

*Instructions relating to the Practice
of passing of Fines, &c.*

THE Fine *sur Conuſance de Droit tantum* is sometimes used by Tenant for Life, to make Release (in nature of a Surrender) to him in Reversion, but not by the Word Surrender; for it is held that a particular Tenant for Life cannot surrender his Term to him in Reversion or Remainder by Fine, but he may grant and release to him by Fine. *44 Ed. 3. 36. 3 Rep. 86. Dyer 216. Plowd. 268.* Also

Also, a Fine on a Release cannot enure to an Use; *Co. Inst.* 3. 36. that is, cannot be intended to the Use of any other than he that levied it, unless an Use is expressed in the Fine, or another Deed; and if a Disseisor be, and the Disseisee levies a Fine upon Release, thereby the Right is gone, and a Stranger may levy such Fine to Tenant for Life, and it shall be no Forfeiture of his Estate. 3 *Leon.* 36, 37.

If two join in levying a Fine *sur Done Grant & Render*, the Grant and Render may be to one of them, and none can take the first Estate by way of Render but the Conusors, or one of them; so if made *in primo gradu* to one that is no Party to the Writ, it is not good; but one *in secundo gradu* may take; as if two levy a Fine, and the Grant and Render back again is to one of them only, this is good enough. 2 *Co. Inst.* 514. And the Render of Rent, if any be, must be to one of the Parties to the Fine.

And no single or double Fine may be with a Remainder over to any other than what is named in it, but it must be to the Conusee and his Heirs only; nor can any Rent be reserved on a Fine *sur Conusance de Droit Come ceo*, but it may be on a Fine *sur Grant & Render*, this Sort of Fine being only taken in Law to be rather a private Conveyance, or Charter betwixt Party and Party, and not as a Writ of Judgment on Record; and also it may be on a *sur Concessit*. 5 *Co.* 38.

Note, That a Render of a Concord may not be of any other Thing than what is in the Writ of Covenant, unless it be of a Rent or Common issuing out of it. 18 *Ed.* 4. 12.

But

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But if a Fine be recover'd on other Agreements than what are in the Writ of Covenant, they are mostly unavoidable, and the Fine will only be void as to such Rent, Remainder, and Covenants, but good for the Residue. 5 Co. 38.

Observe, That *A.* may not reserve to himself a less Estate, by way of Remainder, than the Fee. See *Dyer* 33, 34, 69. 14 H. 4. 31.

Observe, When the Words *Come ceo que il ad de son Done*, viz. *ut il que idem* the Conusee *babet de Dono præd'* the Conusor, are left out in a Fine, and such Fine be levied to him who has the Freehold of the Land, then it is called (a Fine on Release) and is to be executed; and if he that acknowledged the Fine be seised of the Land, and he to whom it is levied hath not the Freehold of the Land, then it is called a Fine Executory, and must be executed, unless the Party be in Possession, and then there needs no Writ of *hab. fac.* &c.

Observations on the Parts of a Fine.

Observe, the Writ of Covenant is the same always in all Cases, be the Fine of whatever kind; for the Reason why there is such Difference in Fines is, because they are altered and changed according to the various Forms of the Concords, (though the Writ of Covenants and *Præcipe* be the same) for from the Concord the Variation arises.

Observe, That sometimes some Things pass in the *Præcipe* that are not named in the Concord.

And

And if a Man purchase divers Parcels of Land of divers Men, all the Parcels may pass in the same Fine, and the Writ of Covenant must be brought by all the Vendees against the Vendor or Vendors; but he must have several Warranties and Releases for the several Parcels. See 44 *Ed.* 3. 21 *Ed.* 3. 33.

Further, all Concords have their Adjuncts internally or externally contained in the Concord, as the Clause of Reservation of Services, Rent, or other Things; the Clauses of *Nomine pœne*, Distress or Warranty; all which must be made in like Words and Form as in Writs extrajudicial.

The external Adjuncts of Concords are the Licence of Alienation, the *Dedimus potestatem*, the Examination of the Parties, and the Conuſance of all.

The Forms of the Writs of Licence to alien, *Quod permittat finem Levare*, *Ad quod damnum*, Pardon for Alienation, *Dedimus potestatem*, *Quid juris Clamat*, and the Process thereon, *Distingas ad Attornand'*, *Quem redditum reddit*, *Per quæ servitia*, where they lie, and for whom, with Proceedings and Pleadings thereon, see *F. N. B. Regist. of Writs*, *West's Symb.*

As to Conuſors, *note*, that Persons attainted of Felony or Treason may levy a Fine, and it will be good against them, and all others, except the King, and the Lord of whom the Land is held; so Care ought to be taken how such Fines are levied. 17 *Ed.* 3. 52. 17 *Aff.* pl. 1. 1 *H.* 7. 7. 9 *H.* 6. 20. 8 *Aff.* 25.

A Joint-Tenant, Tenant in common, or Partner, may levy a Fine of the Land so held by him

him to a Stranger, or to another Joint-Tenant, Tenant in common, or Parcener. 26 H. 8. 9. Dyer 69. Plowd. 338, 378. 4 Ed. 4. 68.

Also Tenant in Fee-simple, in Remainder or Reversion, and Tenant for Life, it is said, may levy a Fine *sur Grant & Release*, &c. of the Lands he holds for Life of the Tenant for Life. 44 Ed. 3. 36. But if the Estate be larger, it is a Forfeiture of his Estate. 4 H. 7. So is the Law the same of such Fines by Tenant in Tail after Possibility, Tenant in Dower, or by the Courtesy. 39 Ed. 3. 16. But it is no Forfeiture of a Rent. 2 H. 5. 7.

As to Fines passed before Commissioners by *Dedimus*, the Commissioners are to return their *Dedimus*, with the Concord annexed, within one Year next after the Taking the Conusance at farthest; and if they refuse to return or certify the same, the Party aggrieved by it may by a Writ called *de Cognitionibus admittendis*, or a *Certiorari*, compel the Commissioner that has it in his Custody, or his Executor or Administrator, if he be dead, to certify it. Stat. 23 El. c. 3. Dyer 220, 226, 320. Fitz. N. B. 147. Co. 5. 39.

Note also, That one Concord may be of Lands in several Counties, and the Fine *pro Licentia Concordandi* of all extracted entirely; but there must be several Writs of Covenant returnable all at one Day. Dyer fol. 227. pl. 24.

The End, Intent, and Scope of a Fine being to convey and pass a Right, and limit Estate from one to another, appears by the Concord; therefore take notice, that though there be divers Conusees, yet the Right shall be limited to one of them only, and the Estate limited to his

Heirs only whose Right it is acknowledged to be. 3 H. 6. 42. Ed. 3. 64. West's Symb. Tit. Fines.

Note; The King by Patent or Commission, with a *Non obstante*, may give Power to A. and B. Justices of Assize in a Circuit, when A. is not a Judge of either Bench, only a Serjeant at Law, to take the Conuſance of all Fines *ſeparatim & conjunctim*; and upon ſuch a Commiſſion, the Conuſance of a Fine taken by A. will be good, without a *Dedimus* ſued out before or after it. *Jenk. Cent. Caſes 227.*

To know if a Fine has been ſuffered, ſearch the *Cuſtos Brevium's* Office.

A Fine *ſur Conceſſit* has been always taken to be the harmleſs and innoxious (and of leſs Operation in Law) than any other, and bears near Affinity to a Grant, and therefore ſhall not operate to a Diſſeiſin to a third Perſon; and ſo far it ſhall be conſtrued not to work a Wrong, that the Eſtate ſhall paſs by Fractions, and the ſeveral Interests remain ſeparate, notwithstanding ſuch Fine. 2 Mod. 112.

As to the Execution of Fines, ſee the Caſe of *Lever* againſt *Hofier*, 2 Mod. 48, 49. where it is held *per Cur'* that a Fine, or Recovery of Land in a *Lieu Conus* is good. 2 Cro. 574. 2 Mod. Rep. 48, 49. And for the Execution of ſuch a Fine by *Scire facias*, the Will muſt be named. See alſo *Piggot* and *Lee's Caſe*, 2 Mod. 117.

As to the Amendment of a Fine, ſee among the Precedents, a Deed to rectify a Miſtake in a Fine, *Poſtea*.

The Record remaining with the *Cuſtos Brevium* was amended, and made according to the Record remaining with the Chirographer, be-
cauſe

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cause (says the Book) the Justices took it, that the Note remaining with the Chirographer *est principale Recordum.* 3 Leon. c. 234.

Touching the Form of Fines, it is to be considered upon what Writ or Action the Covenant is to be made, and there must pass first a Pair of Indentures between the Conusor and Conussee, whereby the Conusor covenants to pass a Fine to the Conussee of such and such Things by such a Time limited, and these Indentures preceding the Fine are said to lead the Uses of a Fine; but by the *Stat.* of the 4 & 5 *Ann.* the Uses of a Fine may be declared after the Fine levied, and be good in Law; upon this the Writ of Covenant is brought by the Conussee against the Conusor, who then yields to pass the Fine before the Judge: So the Acknowledgment being recorded, the Conusor and his Heirs are presently concluded, and all (Strangers not excepted) after five Years past; and if the Writ whereon the Fine is grounded be not a Writ of Covenant, which is usual, but a Writ of *Warrantia Chartæ*, or a Writ of Right, or of Custom and Services, and then the Writ is to be served upon the Party that is to acknowledge the Fine; and he appearing does it accordingly. *West. Sett.* 23. *Dyer* 179.

By *Stat.* a final Concord cannot be levied in the King's Court without original Writ; and when a Fine is passed, it is to be in the Presence of the Parties.

Note, That Fines are sometimes called double Fines, when the Lands be in several Counties.

Post Terminum Fee.

NOTE; in levying a Fine, the *Post Terminum* is a Return of a Writ, not only after the Day for the Return thereof, but after the Term, which the *Custos Brevium* of the Court of *Common Pleas* takes the Fee of 20*d.* and it is used for the Fee so taken.

To search whether Fines have been had and levied, the chief and most proper Place is the *Custos Brevium* Office in, &c.

For the Method and Manner of pleading Fines, see *Nelson's Abridgm.* p. 89. Vol. II.

A Fine, though levied in the Court of Ancient Demesne, works a Discontinuance, though the Court is not of Record, in as much as the Freehold is recovered in the Action, such Fine is no Bar to an Estate-tail, because if the Fine is not with Proclamations, it is not within the *Stat.* of 4 H. 7. and so cannot bar an Estate-tail. 1 *Salk.* 240.

Note; The *Dedimus potestatem* contains the Substance of the Writ of Covenant, and therefore must bear Teste after it, otherwise it is Error, and must be signed by the Lord Keeper, Chief Justice, or some of the Judges of the Circuit where the Land lies. *F. N. B.* 146. *Cro. Eliz.* 677, 740. *Dyer* 220. *Co. Reading* 10. 1 *Roll's Abr.* 794.

It has been a Question, Whether the Record of a Fine remaining with the *Custos Brevium* shall be amended, and made according to the Record made and remaining with the Chirographer? And in *Formedon*, the Tenant pleaded a Fine with Proclamations, the Demandant replied *Nul Tiel Record*; and the Truth of the Case

was, that the Record of the Fine, which remained with the Chirographer, did warrant the Plea, but that which remained with the *Custos Brevium* did not warrant it; and both these Records were shewn to the Court: And *Rhodes Justice* cited a Precedent, 26 *Eliz.* where, by the Advice of all the Justices in *England* where such Records differ, the Record remaining with the *Custos Brevium* was amended, and made according to the Record remaining with the Chirographer; which *Windham* granted; and afterwards the said Precedent was shewed, in which were set down all the Proceedings in the amending of it, and the Names of all the Justices, by whose Direction the Record was amended, were set down in it; and that the said Precedent was written, and the Amendment of the said Record recorded by Commandment and Appointment of Justices *in perpetuam rei memoriam*.

And the Reason which induced the said Justices to make such Order is here written, because they took it, that the Note remaining with the Chirographer *est principale Recordum*. *Leon.* 3 Part, 4, 23.

Though a Fine supposes a Writ of Covenant, yet now it may be levied without it, according to the present Practice. *Cases in Law and Equity*, in K. B. 43. Lord *Say* and *Seal's* Case.

Note; And tho' Fines are taken by *Dedimus*, yet they are recorded as taken in Court, to prevent Questions about Captions. *Cases in Law and Equity*, in K. B. Lord *Say* and *Seal's* Case.

And further take notice, That a Fine levied in the Vacation Time may be a Fine of the precedent or subsequent Term, as the Parties will have it. *Cases in Law and Equity* 44. Lord *Say* and *Seal's* Case.

Mod.

Modern Cases in Law and Equity concerning Fines.

A Fine, after five Years past, is no Bar to a Writ of Error to reverse it. See the Case of *Cockman and Farrer*, *Skinner's Rep.* p. 18.

Nor is it a Bar to a Writ of Disceit brought to reverse that Fine. See *Skinner's Rep.* 260, 262.

A Fine may be set aside and vacated on Inspection in Court, as to the Age of the Party. *Skinner's Rep.* p. 24. See Serjeant *Burly's* Case in C. B.

A Fine is sufficient to pass an Estate without any other Conveyance. *Skinner* 184. *Herring and Brown's* Case.

A Fine destroys not the Jointure of the Wife, tho' Husband and Wife join in levying a Fine of the Wife's Jointure, with Design to raise a Building Term, on Agreement, that the Wife shall have her Jointure out of the reserved Rent, because the Fine enures only to the Building Term. *Skinner's Rep.* p. 238. *Anonymous.*

A Father, Tenant for Life, with Power to make Leases for 21 Years, three Lives, or 99 Years determinable on three Lives, Remainder to his Son in Tail, Remainder to the Father and his Heirs, the Father grants Leases for 21 Years, and dies; the Son being Tenant in Tail, grants Leases to J. S. for 21 Years, to commence after the Expiration of the first Term, and dies during the first Term, leaving Issue, the Issue levies a Fine, and declares the Use to himself in Fee; the Term ends, the se-

cond Lessee enters, and the Lessee brings an Ejectment; it was agreed, that the second Lessee was not warranted by the 32 of H. 8. or any Power within the first Settlement; and adjudged that the Issue in Tail might vacate the future Leases and enter on the Tenant when it commences in Possession; for by the Fine the Estate was discharged of the Estate-tail, and the Conufee had a Fee in him. *Skinner's Rep.* 284.

A Fine may be vacated by Writ of Error only. *Cases in Law and Equity*, Lord Say and Seal's Case 44.

And Fines that are void will make a Discontinuance. *Cases in Law and Equity* 179. the Queen and Corporation of *Buckingham*, in K. B.

A Fine may be set aside in the Chancery, being levied to other Uses than what were intended in the Marriage Articles. *Cases in Law and Equity* 436. 5 Geo. 1. *Trevor's Case*.

A Fine with Grant and Render is Tanta-mount to a Feoffment and Re-feoffment, and the Render creates a new Estate. *Salk.* 337. *Price* vers. *Longford*, in K. B.

A Fine *sur Conuzance des & come ceo* implies a Fee-Simple, but that may be qualified to a particular Estate. *Salk.* 340. *Hunt* vers. *Bourne*.

On Error to reverse a Fine, a *Sci. Facias* must be awarded against the Tertenants. *Salk.* 339.

Dower is not forfeited by Fine and fraudulent Agreement. *Dolin* against *Coltman*, 1 Vern. 294, 295.

After a Fine is received and recorded, no Feme covert, nor her Heirs, shall be received to aver that she was not examined nor assented. 2 *Inst.* 515.

How a Fine operates, being levied by a Decree in the Court of Chancery.

A Fine being levied by a Decree in Chancery to a particular End and Purpose, which would operate farther in Point of Law than the Decree ordered it; and it was resolved, that such Fine should not be suffered in Equity to work any farther than the Decree intended. *1 Chan. Caf. 49.*

A Fine *Cestui que Trust* will bar an Estate, but not a Remainder over to another; and it has been doubted, whether by a Recovery of *Cestui que Trust* any Thing be barred, *1 Chan. Caf. 213.* but it has been held, that the Fine or Recovery of *Cestui que Trust* shall bar and transfer the Trust, as it should an Estate at Law, if it be on a valuable Consideration. *Ibid. 49.* And *Cestui que Trust* in Tail, where the Remainder in Tail was devised over, levied a Fine, and died without Issue; on a Question whether this Fine by *Cestui que Trust* in Tail, and Non-claim, shall bar the Remainder Man, the Lord Keeper was of Opinion it should. *1 Vern. Rep. 226,* so on. See *Recoveries.*

Note, That the Court of Chancery will decree a Fine to be levied on the Words, *I do intend to levy a Fine to secure 500 l.* *2 Mod. Rep. 91.*

It hath been resolved, that a Fine with Proclamations and Non-claim bars all Trusts and Equity; but this is with two Differences:

First, Where the Equity chargeth the Lands, there the Fine bars; but when it charges the

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Person in respect of the Land, then it bars not; and if the Equity or Trust be created by the Fine, that Fine shall never bar the Equity which it created; an Entry on the Land by *Cestui que Trust* is no sufficient Claim to avoid the Fine, for the Claim of an Equity can be made no other Way but by *Subpœna*. 1 Chan. Cas. 268, 278.

A Trustee sold the Land to a Stranger, who had no Notice of the Trust, and a Fine, and five Years past; and afterward the Trustee, for a valuable Consideration really paid, purchased these Lands again; and it was decreed that the Trustee, notwithstanding the Fine and Non-claim, should stand seised in Trust as before the Sale. *Bovey's Case*, 1 Vern. 60. 2 Can. Rep. 124.

A seised in Fee in Trust for B. for full Consideration conveys to C. the Purchaser, having Notice of the Trust; afterward C. to strengthen his own Estate, levies a Fine; Whether B. the *Cestui que Trust* be not in that Case bound to enter within five Years? 1 Vern. Rep. 149.

A Fine levied by a Mortgagee, and five Years Non-claim, without Bar, the Mortgagor of his Equity of Redemption, who may, notwithstanding, bring his Bill to redeem. 1 Vern. 252.

*In the great Case of Sir Cha. Orby
& al' contra Lord Mohun.*

1. s. 2. Vern.
531.

LORD Chief Justice Trevor's Argument on the Question arising upon a Settlement by Lease and Release of C. Earl of M. with Intent a common Recovery might be suffered to sever

ral Uses, with Reservation for Parties to make Leases as they should come into Possession. *Of what Lands, &c.* 1st, Reserving the ancient Rents, &c. 2^{dly}, Reserving the most improv'd Rents: It happen'd no Recovery was suffer'd, but a Proviso in the Settlement for the Trustees to stand seised, as the Recoverers might.

A Devise by C. Earl of M. to raise and pay 8000 *l.* to Lady G. and 4000 *l.* to Lord F. the Estate descends to Lord C. B. in Remainder, who devised the Remainder to the Lord *Mobun*, it then descends to F. Earl of M. for Life, who made two Leases to Sir *Cha. Orby* and Mr. *Orby* severally, reserving the ancient and accustomable Rents, and does not specify what those Rents are.

Two Points were insisted on for the Plaintiffs (Lord *Mobun* being Executor) for the 8000 *l.* First Question, If the 4000 *l.* ought to carry Interest? Now I conceive the Term, being in the Nature of a Mortgage, must carry Interest; but a Deduction of Interest must be made for the Time that *Fitton* had the Estate in his own Hands. Second Question, If the Leases be well made? As to the first Lease, the most improved Rent is uncertain; as to the other Lease, if it be good, is the Question before us; if being a Lease by one Deed of all the Lands within the Power, such Lease be void as to the Remainder Man. Now I am of Opinion 'tis void, as against the Remainder Man, for all the Lands. The Words of the Lease are, *Reserving thereof, &c.* and the Word *therefore* goes to all the Lands. The Cases cited are out of this Case, as 3 *Cro.* 340. *Dyer* 308. But in *Knigh's Case* in the 5th *Rep.* it is resolved, that what comes after the Reservation shall not sever

it; but I go upon another Reason, and taking it to be a several Reservation, I am of Opinion it is a void Lease.

Now I agree such Lease may be good when made by Tenant in Fee-simple, but he must make out the ancient Rent; but this Lease was not made by the Master of the whole Estate, and so differs much. The Reservation must be certain, and the Remainder Man must make it out.

There are Uncertainties upon this Lease; and I conclude that this Lease cannot be good.

The Arguments as to *Owen* and *Apree's* Case in *Cro. Car.* are mistaken; Ch. Just. *Vaughan* in *Threedneedle* and *Lynas's* Case 3 *Keb.* 380. mentions another Reason, That whereas there were three Manors usually let, the Lease was but of two. The Case in Truth was upon a Lease of two Manors, excepting the third under the ancient and accustomable Rent, not specifying any: But I think that Case can be no Authority, nor is it of any Weight with me for my Opinion herein. The Counsel on the other Side cited the Case of *Lewson* and *Piggot*, a Settlement reserving twelve Pence for every *Cheshire* Acre; but that does not come up to this Case. Tho' this be but one Deed it must be construed several distinct Leases under such distinct Rents as formerly all the ancient demised Lands were usually set at severally, under several and distinct Rents. Provision should have been made for Counterparts for the Benefit of the Remainder Man, and here is but one Counterpart for all, which may put the Remainder Man to infinite Inconveniencies; here is only one Counterpart for
twenty

twenty several Leases, and not one Rent ascertained. I think the Remainder Man need only aver that it is the ancient Rent, or more, and that is enough for him to aver in that Case; but there is a vast Difference where a particular Rent in certain is reserved, and where not; for in this Case he must not only aver the ancient Rent, but also prove it to be so.

But in Case of a particular Reservation, he must truly aver the same to be the ancient Rent; yet when he shews the particular Rent under the Tenant's own Hand, it is incumbent on the Tenant to prove that it was not the ancient Rent, which will avoid his Lease, and the Land will be recovered; a great Difference in the two Cases. And upon the whole, I conclude that this Lease cannot be good at Law.

Chief Justice Holt's Argument.

As to the Interest of the 4000*l.* it is due from the Time of the Death of the Testator, deducting Interest for all the Time that *Fitton* enjoy'd the Lands. As to the Lease I am of Opinion it is good; the Case is upon a Settlement made, wherein there is a Power for the Tenant for Life to make Leases of the Lands anciently let upon the Fines taken, reserving the ancient and accustomable Rent; and a Lease of these Lands is made in the very Words of the Settlement.

And first, I will consider whether a Lease made by such a Power is good, reserving or rendering Rent in this Manner. Then explain the Words *ancient and accustomable Rent*. And 3dly, Consider where Lands anciently demised

demised severally, and where Lands not anciently demised severally, are all together compiled in one Deed, whether that be not as well as if they had been demised by several Deeds; first, as to the Power, if it be certain, then this Reservation is certain.

Amereith's Case cited in Point. General Words, tho' they do not refer to any certain Particular, are sufficient. The Question in that Case was, If the Patentee should have all the Franchises; and there was the same Objection as here, That the Reference was general and too uncertain, but allow'd good by the whole Court of Exchequer in the Queen's Case.

2dly, It is good, for that by this Reservation the Rents are certain; even upon a particular Rent reserved it must be averred to be ancient and accustomable Rent, or more; the bare Reservation of a Sum does not make it good in *Whitlock's Case*, 8 Rep. 69. b. Sir *John Molyn's Case* in 6 Rep. 6. &c. is in Point. As to the Objection of being inconvenient to the Remainder Man, all the Writings are of course in his Hands; and I take it he is at no great Inconvenience. *Apree's Case* set forth again, differing from the former, said to be the Case in Point, upon a Power derived from Tenant in Fee, according to *Whitlock's Case*, and as good as if made by Tenant in Fee.

How this ancient Rent must be ascertained, &c. Example on Variety of Rents.

Case of *Morice* and *Antrobus*, an undoubted Authority. Several ancient Rents the Statute of *Eliz.* expounded according to the Rent of the last Lease by an Example; he supposes a Variety of Reservations of Rent at several Times,

Times, and shews *ex necessitate* it must be brought to some Certainty, relies upon the Case of *Morice* and *Antrobus*.

A Dean and Chapter may increase, but never diminish the Rent, concludes this Point with a Rule on a Power reserved to Tenant for Life (upon any Settlement) to make Leases.

3d Point in Answer to Objection, That all the Lands are demised by one Deed; if the Reservation be several; tho' they are compiled in one Deed, that can be no Diminution of the Power, shewn by Example, that one Counterpart is as good as twenty. *Ashley Knight's Case* and others express, several Reservations may be in one and the same Deed, where Lands anciently demised, and Lands not so, are let in one Lease, one Counterpart sufficient. Words sometimes shall be taken severally tho' never so joint, as in Just. *Windham's Case*.

In a Several Demise by joint Words, &c. of several Lands: The Words in the present Case are express to make it several, and this Lease is made in Pursuance of his Power. *Slingsby's Case* express, *Resp. ad Objec.* that a Power of this Nature ought not to be taken favourably. Sir *Edward Cleer's Case* compared, the Judges there had Recourse to the Power *ex necessitate*; so here in this Case, and likewise in *Hob. 312.* the Power ought to be construed favourably; as in *Scroop's Case* upon a Covenant to stand seised to other Uses than in the Settlement. Circumstances and Form to be pursued, tho' no Notice taken of his Power. And so concludes nothing here omitted to make it an effectual Lease.

Lord

Lord Chancellor *Cowper* agrees to the first Point, as to the Interest due from the Death of the Earl *Charles* Sen. when the Interest kept down, and when revived. That the Lease as to the improved Rent was uncertain; the great Point is upon the other Lease; and in this Point he agrees with the Lord Ch. Just. *Trevor*.

Some Things premised, that Equity will not help this Lease, but it must stand and fall as if a Recovery had been suffered. Reservation between Party and Party may be good; but the Question is, whether it may bind the Interest of a third Person, &c. That this Reservation is void as to the Remainder Man, because it may not happen to be recovered. Unfair Arguing used as to Certainty and Uncertainty, there is a wide *Medium*. If three Suppositions be with the Remainder Man, it may be a good Lease; but if not, then it is bad. Here the Remainder Man may meet with Difficulties insuperable, and it is good to reserve the ancient Rent or more, to prevent Uncertainty.

Ans. As to referring to the last Rent, he that has the Fee is not bound to reserve the Ancient Rent, and the Reservation and Deed ought to be taken strictly against the Tenant for Life, because of the Restraints put upon him. The Reason in *Mountjoy's* Case reversed, where the Power of Tenant in Tail was made narrower; here the Estate of Tenant for Life is enlarged. In Construction of Deeds the true genuine Sense and Meaning of the Parties must be attended. The Intention of the General Words in this Settlement for a Remedy to the Remainder Man, that he might not be involved in perpetual Controversy. The great Dis-

Disadvantage of the Remainder Man, and what the Reversioners must prove, if the Lease be good; the Advantage if there had been a Counterpart.

Ans. to Obj. That tho' a particular Sum had been reserved, if the Lessee should go about to destroy his own Lease, the Lessor or he in Remainder might bring Ejectment: This Case varies, and gives great Advantage to the Lessee; but otherwise, if the ancient Rent had been reserved; the Intent of the Settlement as to the Rent, there are good Authorities in Point in *Montjoy's Case*.

That this Lease is void as against the Remainder Man; it might have been prevented by reserving more than the ancient Rent in the Case before us; great Strefs is laid on this very Thing, for the Lessee to sign a Counterpart, what advantage the Tenant may take hereupon against the Remainder Man.

Another Observation or Answer to the Certainty of the Settlement or Deed, of the true Way to execute a Power like this, upon a *Proviso* in Deeds, to insert such and such Covenants. The Words *or more* make a great Alteration, but still it must be certain the Sum reserved must refer to an absolute Certainty, as in *Levison's Case*; but this Case refers to nothing but to fluctuating Custom and Usage.

What if it had referred to a Lease between such a one and such a one; this Reservation is conditional, and good between Lessor and Lessee, but not to bind the Remainder Man; the Condition what? where the Lands are demised by sufficient Description, the Lessee cannot go back unless he forfeit the Lease.

But

But here he may say the Lands are more or less, and here is only a bare Possibility, attended with great Charges, &c. If less or fewer Lands than anciently be let for the same Rent in certain, it is good. If there had been a Recovery, &c. *certum est quod certum reddi potest* will not do in this Case; that the Lease is not in Severalty, but what if it was? *Obj.* That the ancient Rent is only reserved for the ancient Lands; the Words of the Lease are severally, and the Word *heretofore* left out of the *Reddend*; there is a Severance, but the minutest Severance that can be. It must be a Severance of all the Things demised; nor is it here said as anciently demised, here is only one Reservation singly of all the Rents for all the Lands, only a denoting that they were ancient Rents, &c. respective Rents only denotes, but does not reserve. Here are more Lands than anciently let, and the *Redditus* is for all that is leased; the Course was to make such Leases in particular Terms, and not according to the general Words. This is the first Attempt to delegate the Power generally, that was particularly to be executed, and is fatal to Remainder Men.

And the Court of Equity will not aid it, and concludes it is not a good Lease; and accordingly decreed Sir *John Hobart* should be Trustee for the Uses in the Settlement, permit his Name to be used, and decreed an Account for the mortgaged Estate; and if the Party sets up a Title to the Inheritance and Mortgage, he must account for the whole Profit, as the Counsel for the Defendant insisted on; but the Lord Keeper decreed only an Account, and

if the Account be delayed, that a Receiver be appointed, refused to speed the Report upon the Face of the Decree, because it is presumed all Persons will obey. Motion to discount Interest for the 8000 *l.* but to this the Keeper answered, that Earl *Charles* the younger having the Fee-simple in Reversion, and the Fee being fallen now into the Party who was to have that Money, shall he not have it out of the Estate? for it is not personally due on Earl *Fitton*; it is too hard to give Interest for it to you that have the Fee, the same being a personal Demand of *Atwood*; *Thomas's* Case in the House of Lords was the same, she recovered her Portion after the Fee had fallen in to her.

The Keeper said that was because of defrauding the Trustees, it may be, and so would not decree any Interest for it, but that all Writings, except such as concerned the mortgaged Estate, to be delivered up; and those, when the Possession comes to the Defendant, by *Brent* Administrator of *Charlotte*; and decreed Costs for the 4000 *l.* only as Mortgagees usually have.

The Operation of a Fine to bind a Trust of a Lease made to the Conusor's Use.

As in the Case of the Earl of *Newcastle* and his Countess against the Earl of *Suffolk*, 6 Car. 1. fol. 644.

THAT the Plaintiff claims the Premises by Deed in 11 Jac. executed by the late Earl of *Suffolk* to Dame *Judith Corbet*, Mother of the Plaintiff's Wife Dame *Elizabeth*, in Consideration of a Marriage between *Henry Howard* Esq; the third Son of the said late Earl of *Suffolk*, and the said *Elizabeth* Daughter of the said *Judith Corbet*; and by Fine levied thereupon by the said late Earl, and Dame *Catharine* his then Wife, and the Defendant the now Earl of *Suffolk*, his Son, unto the said Dame *Judith Corbet*; with general Warranty to and for the Use and Behoof of the said *Henry Howard*, and the said *Elizabeth* his then Wife, for their Lives, in Part of her Jointure.

The Defendant insists, that the said Fine and Conveyance ought not to take Place, or work upon the said Lands and Premises, for that as touching Part of the Premises, viz. *Tollesbury, Abbsall, &c.* there was a Lease in 3 Jac. made by the said Earl unto *Roger Pennel* his Servant, for fifty Years, from *Michaelmas* then next, in Trust for the said Countess of *Suffolk*; under which said Lease and Trust, by Agreement and Permission of the said Countess of

Suffolk, the said *William Howard* received the Profits of the Manor of *Tollesbury*, having the Inheritance thereof settled on him by Deed from the said late Earl his Father, and the said now Earl, in Avoidance of the Plaintiff's Title to the Manors of *Abshot*, *Salcot* and *Wig-borrow*, did alledge the like Lease to be made to *Pennel*, upon the same Trust for the said Countess Dowager of *Suffolk*; and that the same Manors descended to him as Son and Heir to the said late Earl his Father. And it was insisted that the said late Earl had no Estate in the Manors of *Wendon* and *Westbury* at such Time as the said Fine and Conveyance were made and levied, but that the Interest thereof was then in *Henry Speller* and *Michael Humphry*; and that Sir *Henry Speller*, being Survivor, granted the same, and demised to the Lord *William Howard* and *Marmaduke Moor* for 500 Years, and afterwards convey'd the Inheritance to the now Earl of *Suffolk*.

This Court did therefore now declare, that the said Fine, wherein the said Countess Dowager of *Suffolk* is a Party, is sufficient to bind the Trust of the said Lease made to *Pennel*, being for the said Countess's Use; and howbeit the Estate in Law of the said Manors of *Wendon* and *Westbury* was in the said Sir *Henry Speller*, yet the same was then in the said Sir *Henry Speller* and *Michael Humphry*, in Trust for the said late Earl of *Suffolk* and his Heirs, for that it appeared he held the Possession thereof, and disposed thereof at his Will and Pleasure, and of Part thereof made a Lease of twenty-one Years, and several other

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Leases;

Leases; all which Leases did precede the Plaintiff's Jointure, and are yet in Being. And it not appearing whether the said Lease of 500 Years made to the said Lord *William Howard* and *Moor* was made before the Commencement of this Suit, or the Process or Letter served touching the same, nor whether the Lessees had any Notice of the said Trust, this Court decreed that the Plaintiffs and their Assigns, during the Life of the said Lady *Elizabeth*, shall enjoy all the Lands in the Bill against the Defendants, their Heirs, &c. but if hereafter the Lease of 500 Years shall appear not to be made *pendente lite*, then it is decreed the said Earl of *Suffolk* shall recompence and satisfy the Plaintiff by reason of the said Lease.

Where a Fine shall not be said to be levied by Covin. See 3 Rep. 77. *Fermor's Case*.

And a Fine levied by Covin shall not bind him that Right has. *Fermor's Case*, 3 Rep. 77.

And if a Man acknowledges a Fine in my Name, or in Action in my Name acknowledges a Judgment of my Land, this shall bind me; but I may have a Writ of Deceit; but otherwise in Case of an Obligation in my Name, because I may avoid the Deed by the Plea of *Non est factum*. 19 H. 6. 44.

A Feme Covert is bound by her Fine by the Law of the Land, for the Necessity of Commerce.

A Fine levied by a Feme Covert as a Feme Sole, the Husband may defeat it. *Hob. 225. 7 Co. 8. Countess of Bedford's Case*.

But

But if a Feme Covert levies a Fine as a Feme Sole, if her Husband die she shall not defeat it, *Style 254. Haywood and Williams's Case*; but if the Husband defeat it not, it shall bind her and her Heirs for ever. And if Feme Covert take a second Husband, and they two levy a Fine, this shall bind her and her Heirs for ever. • 7 *H. 4. 24.* 9 *H. 4. 23.* 9 *H. 6. 24.* But in both these Cases the Husband may defeat it.

And if one with another Man's Wife levies a Fine, the Court will not stay, tho' the Husband appears in Court and shews the Matter. *Trin. 7 Jac. K. B. Kebblethwait and Ward.*

And if a Woman levies a Fine by the Name of a Wife of *J. S.* this Fine is meerly void, because it appears so by the Record. *Sid. 122.*

The Court will not stop a Fine taken of a Feme Covert when she was dead. 1 *Ro. Ab. 114.* 1 *Vent. 48.*

A Father, Tenant for Life, with Power to make Leases for twenty-one Years, three Lives, or ninety-nine Years, determinable on three Lives, Remainder to his Son in Tail, Remainder to the Father and his Heirs. The Father grants Leases for twenty-one Years, and dies, the Son being Tenant in Tail, grants Leases to *J. S.* for twenty-one Years, to commence after the Expiration of the first Term, and dies during the first Term, leaving Issue; the Issue levies a Fine, and declares the Use to himself in Fee; the first Term ends, the second Lessee enters, and the Lessee brings an Ejectment;

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it was agreed that the second Lessee was not warranted by the 32 H. 8. or any Power within the first Settlement, and adjudged that the Issue in Tail might vacate and avoid the future Lease, and enter on the Tenant when it commences in Possession; for by the Fine the Estate was discharged of the Estate Tail, and the Conu-fee had a Fee in him. *Skin. Rep.* 284, 317. *Symonds and Cudmore.*

Tho' a Fine supposes a Writ of Covenant, yet now it may be levied without it, according to the present Practice. Lord Say and Seal's Case, in *K. B. Cases in Law and Equity*, Ca. 43. See *puis devant*.

And tho' Fines are taken by *Dedimus*, yet they are recorded as taken in Court to prevent Questions about Captions. Lord Say and Seal's Case, *Cases in Law and Equity* 45. in *K. B.*

A Fine levied in Vacation Time may be a Fine of the precedent or subsequent Term, as the Parties will have it. Lord Say and Seal's Case, *Cases in Law and Equity* 44.

A Fine may be vacated by Writ of Error only, and those in Remainder are not entitled to it. *Ibid.*

And Fines that are void will make a Discontinuance. *Cases in Law and Equity* 179. Queen and Corporation of *Buckingham*, in *K. B.*

A Fine may be set aside in *Canc.* being levied to other Uses than what were intended in the Marriage Articles. *Cases in Law and Equity* 436. 5 Geo. 1. *Trevor's Case*.

A Fine with Grant and Render is *Tantamount* to a Feoffment and Remainder, and the Re-
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mainder creates a new Estate. *Salk. 337. Peirse v. Longford in K. B.*

A *Finè sur Comusance come ceo* implies a Fee-simple, but that may be qualified to a particular Estate. *Hunt and Bourne, Salk. 340.* On Error to reverse a Fine, a *Sci. Fa.* must be awarded against the Tenants. *Salk. 339.*

See if a Fine and Deed subsequent will extinguish the Power of Revocation. *Comberbatch, Herring and Brown's Case, 11.*

A Term to raise Portions barred by Fine and a Claim. *Hanmore against Eyston, Comb. 67.*

Fines may be reversed by the Parties before the King's Silver paid. See several Cases in *Comb. 57, 59, 67, 71.*

A Devise to C. for ninety-nine Years, for Payment of Debts and Legacies, with Remainder to R. M. in Tail. R. M. enters with Consent of A. C. and pays the greater Part of the Debts, and then levies a Fine. *Quære, If C. is barred by the Fine and a Claim. Comb. 67, 68. Hanmore v. Eyston.* The Court was of Opinion, that admitting the Term as in Trust, yet it is barred by the Fine, and also in *Canc.* and Judgment for the Plaintiff.

A Fine bars not the Equity of Redemption. *Hard. 512.*

A Fine after five Years past, is no Bar to a Writ of Error to reverse it, see the Case of *Cockman and Farrer, Skinn. Rep. 13.* Nor is it a Bar to a Writ of Disceit brought to reverse that Fine, *id. 14.* See also p. 260, 262.

A Fine may be set aside and vacated on Inspection in Court, as to the Age of the Parties. *Skinn. Rep. p. 24.* Serjeant Buckley's Case in C. B.

A Fine is sufficient to pass an Estate without any other Conveyance. *Skin.* 184. *Herring and Brown's Case.*

A Fine destroys not the Jointure of the Wife, tho' Husband and Wife join in levying a Fine of the Wife's Jointure, with Design to raise a long Building Term, on Agreement that the Wife shall have her Jointure out of the reserved Rent, because the Fines enure only to the Building Term. *Skinn.* p. 138. *Anonymus.*

Error being brought in *B. R.* of a Fine in *C. B.* the Fine was affirmed; and now a Writ of Error *coram vobis resident'* was brought here; and Exception was taken, that the Writ ought to abate, for that no such Writ lies in the Case, because only a Transcript of the Fine is removed into this Court: And it was liken'd to the Cases of Error in the Exchequer Chamber, where only the Transcript goes up; and if the Writ abates, no Writ of Error *coram vobis* lies.

Sed per Cur', The Reason of that is, because the Exchequer Chamber have only a particular Authority to affirm or reverse. It was admitted that a Transcript of the Record of a Fine is only removed, because upon Judgment of Reversal a *Certiorari* goes for the very Foot of the Fine, and it is cancell'd. *Sed per Cur'*, Error *coram vobis resident'* lies. *Winchurch v. Lelwood*, 1 *Salk.* 337.

Per Holt, *C. J.* If a Writ of Error be brought in *B. R.* to reverse a Fine levied in *C. B.* the very Record is never removed here, only a Transcript; but if the Court adjudge it erroneous, then a *Certiorari* goes to the Chirographer

grapher to certify the very Fine, and when it comes up, it is actually cancell'd. *Fazacherly v. Baldo*, 1 *Salk.* 352.

A Fine levied by a Remainder Man in Tail, binds by Estoppel.

Lord Hollis v. Carr.

THE Lord Chancellor *Finch* having called to his Assistance Justice *Wyld* and Justice *Windham*, to give their Opinions what Relief the Plaintiff was to have for the recovering 6000 *l.* which was his Lady's. After those Judges had spoken shortly to the Matter, he put the Case thus; *viz.* The Plaintiff by his Bill demands 6000 *l.* due to him for his Wife's Portion, with Interest for Non-payment, according to the Purport of certain Articles of Agreement dated in *August* 1661, and nominated to be made between old Sir *Robert Carr* (the Defendant's Father) his Lady and Son, the now Defendant, and *Lucy Carr* his Daughter, on the one Part, and my Lord *Hollis* and Sir *Francis* his Son, the now Plaintiff, on the other Part. And it was admitted *arguendo* that it would be very hard to decree the Execution of the Fine in that Case, for that the Father of the Defendant was alive when the Defendant executed the Deed; and the Father, who never sealed it, being Tenant in Tail, the Son, who sealed, could have no present Right; and how could a Court of Equity decree a Fine in that Case, whereby a Fine may be extinguish'd

tinguish'd indeed, but can never be transferr'd, and by which no Use can be declared? for tho' such Fine be good by Estoppel before the Estate-tail descend to the Issue, yet no Use can be declared thereon. Lord *Hollis* and *Carr* in *Canc.* 2 *Mod.* 90.

It appears Fines may operate by Disseisin, where they can have no other Interpretation, as in the Case of *Piggot v. the Earl of Salisbury*, 2 *Mod.* 112. where it is so agreed, as if Tenant *pur auter vie* levy a Fine to a Stranger for his own Life, it is more than such a Tenant could do, because his Estate was only during the Life of another and no longer.

But in Case of a Fine which is a Feoffment upon Record, a Lease for Years is no Impediment or Displacing of the Reversion; for if Tenant in Tail expectant upon a Lease for Years levy a Fine, it is a Discontinuance of the Tail; and notwithstanding this Lease, the Fine has such an Operation upon the Freehold that it displaces the Reversion in Fee. *Co. Litt.* 332. And therefore, if a Lease for Years prevents not a Discontinuance, it will much less hinder a Displacing in this Case.

But no Judgment was given now in this Case; another Matter being debated, whether the Plaintiff could have Judgment, because he was barred by the Statute of Limitations; for it did not appear he had been in Possession for twenty Years past, and the Verdict hath found any Claim, or that the Plaintiff was within the *Proviso* of the Act.

It was argued in the Case of *Smith* against *Peirse*, where a Person is in Possession by Virtue of a particular Estate for Life, &c. and accepts

a greater Estate, it shall not divest the Estate of those in Remainder for Life, so as the same may be barred by Fine and Non-claim; and the Questions were,

1st, Whether the Term for ninety-nine Years thus devised to the Trustees was bound by this Fine and Non-claim, or not?

2^{dly}, Whether it was divested and turned to a Right at the Time of the Fine levied?

And the above Rule seems to be cleared in the Arguments of this Case; for where a Term for Years was devised for Payment of Debts, with a Remainder over in Tail, he in Remainder enters and levies a Fine, and settles the Land on his Wife for Life, and dies, the Wife survives, and the Debts not paid; and it was insisted the said Term was not barred by this Fine and Non-claim; but it was adjourned. *Hollis v. Carre*, 1 Salk. 86, 87, 88, &c.

But in the Argument of the same Case this further Case seems to be proved, viz. where a Lease is for 100 Years in Trust to attend the Inheritance, and *Cestui que Trust* being in Possession demises to another for fifty Years, and levies a Fine, and five Years pass, the Term of 100 Years, is divested by such Fine and Non-claim, and is turned to a Right, and so barred. *Vide* 3 Mod. 195, 196.

Touching the Time of Claim. 3 Mod. 142.

And where a Fine shall work by Remitter. 3 Mod. 152.

There is something further to be taken Notice of as to the Uses of a Fine; for in the Case of *Jones and Morley*, 4 Mod. 263. the Question was,

Whether

Whether the Deed of 31 *January* did not revoke and controul that of the 29th preceding, because it was made and executed before the Fine was levied, for 'tis not a Fine till ingrossed, and then, and not before, the Uses are raised; but before the Time the Parties were come to a new Agreement, and therefore no Use could arise to *Edward* by the Deed of 29 *Jan.* was a Revocation of it?

And as to this Matter it was said, that some Difference was to be made where a Fine is levied, and the Uses thereof declared by a subsequent Deed, varying in some Circumstances from the Fine; for in such Case, the Party himself, and his Heirs, though not a Stranger, is bound, and cannot aver it to be any other Use than is declared in that Deed.

But where the Deed declaring the Uses of a Fine is precedent, and then a Fine is levied varying from such Deed, there all Parties are at Liberty to aver against it, because the Fine stands singly by itself; and this is now the Case at Bar.

See also the Case of *Davies and Speed*, *Intr. Hill.* 3 *W. & M. B. R.* Rot. 261. where Husband and Wife covenanted to levy a Fine of the Wife's Land, to the Use of the Heirs of the Body of the Husband on the Wife begotten; and held *per Cur'*, that the Limitation of the Uses was void. See the Reasons, 2 *Salk.* 675. and note the Case in *Bridgman* 112. and 4 *Mod.* 267. where the Uses of a Fine to be levied by Husband and Wife were declared by two Deeds precedent, but variant *inter se*, and adjudged the Uses should be guided by the first Deed,

Deed, because it was proved the Wife disagreed to the latter.

As to the Effects and operative Consequences of Fines, they be chiefly consider'd under the following Heads.

1. In barring Privies.
2. Estrangers, who such are, and how and when they are concluded.
3. Of the Time of Claim.
4. Of Fines levied by Husband and Wife.
5. Of Fines levied by Tenant for Life.
6. How Fines are barred by Estoppel.
7. By Discontinuance.
8. How they operate by Remitter.

Privies how barred.

PRIVIES, from the *French Prive*, i. e. *Familiaris* are those that are Partakers, or have any Interest in any Action or Thing, or any Relation to another. There are five Kinds of them, viz.

Privies in Blood, as the Heir to the Ancestor ; Privies in Representation, as Executors or Administrators to the Deceased ; Privies in Estate between Donor and Donee, Lessor and Lessee ; Privies in respect of Contract ; and Privies in respect of Contract and Estate together. 3 Rep. 23, 123. *Latch* 260.

When a Fine is levied, the Heirs of him that levied it are termed Privies ; and if they claim under the same Title that their Ancestor was possessed that levied the Fine, they are barred.

Further, those also are understood to be Privies as are Heirs by Custom, as in Borough English,

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English, Gavelkind, and all such as claim as Heirs by Custom; but here such Privies as are only Privies in Estate, are not intended to be barred; as Joint-Tenants, Donor, Donee, Lessor, Lessee, or the like. *2 Co. Inst.* 56.

A Fine by one, that is not actually seised of the Entail, will not bar a Sister, though it will his Issue. *Cro. Car.* 434, 435. *pl.* 5.

For where he need not be mentioned in the Conveyance of the Discent, his Fine shall never bar.

Note; The Word *Privies*, in the Opinion of several great Lawyers, does not extend to Heirs in Tail, but only to Heirs in Fee. See *T. Jones's Rep.* 241, 242.

And by *Hobart* 333. the Word *Privies* is an operative Word, and contains as much as all the Words in *32 H. 8. cap.* 36.

And one that makes his Title as Heir by another, and not by him that levied the Fine, may not be barred. *1 Cro.* 377.

And where a Man mortgages his Land, and continues in Possession, and afterwards levies a Fine, such Fine, and Non-claim for five Years, shall not bar the Mortgagee. *1 Sid.* 460. *Cart.* 209, 210.

And he that is Privy in Blood only, and not in Estate, is not within the Statutes, nor shall he be barred by a Fine. *Trin.* 21 *Jac.* C. B. *Godfrey's Case.*

A Fine *Cestui que Trust* shall bar and transfer a Trust, as it should an Estate at Law, if it were on a good Consideration. *Chanc. Rep.* 49.

A Fine levied by the Remainder in Tail, in the Life-time of Tenant in Tail, will bar his Issue,

Issue, while the Issue of Tenant in Tail are living. *Carter* 168.

Though a Fine levied by Remainder in Tail, who was not seised, will not bar another Remainder. *Cro. Car.* 434. *pl.* 4. *Hob.* 332, 333.

Baron and Feme Tenant in special Tail, the Baron levies a Fine and dies, the Estate-Tail is barred, and not dissolved or determined, but has Continuance as long as the Wife lives, as to herself, for the Feme has an Estate, and cannot bar it; but as to the Heirs in Remainder, which are the Issue of the Baron, they are barred. *9 Rep.* from 138 to 141.

Of Uses in general.

AN Use is a Confidence or Trust reposed in one, to whom the legal Estate is convey'd, that *Cestui que Use* (he to whose Use) shall take the Profits, and that the Ter-Tenant shall make an Estate according to his Direction; this is an Use at Common Law. *1 Rep.* 12. *1 Inst.* 272. But Uses may be raised by Transmutation of the Estate and Possession, as by Feoffment, Fine or Recovery, &c. *1 Inst.* 271. Or out of the Estate of the Owner of the Land, as by Bargain and Sale, by Deed indented and inrolled, or by Covenant to stand seised to an Use upon lawful Consideration, without Transmutation of the Estate or Possession.

Or an Use is where the legal Estate of Lands is in a certain Person, and a Trust is also reposed in him, and all Persons claiming in Privy under him, concerning those Lands that some other Person shall take the Profits of, and
be

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be so seised and possessed of that legal Estate, to make and execute Estates, according to the Direction and Appointment of the Person or Persons for whose Benefit the Trust was created: And by the Rules of the Common Law, he, for whose Use such Person was so seised, had neither *jus in Re*, nor *ad Rem*; for if he came upon the Land, he was a Trespasser.

The Original of Uses was from a Title in the Civil Law, which allows of an Usufructuary Possession, distinct from the Substance of the Thing itself.

An Use and a Trust were all the same Thing, till the *Stat. of 27 H. 8.* at Common Law, which Act distinguish'd them. The Method of making Conveyances by Way of Trust was invented to evade the *Stat. of Uses*, and are not so much favour'd in the Law. *Paschæ 23 Car. B. R.*

Of the Uses of a Fine.

A Fine levied without any Consideration, or Use expressed, is to the Use of the Conusor and his Heirs. *Vaugh. 43.* See *Dorham's Case*, 9 Rep. 8, 11. a.

A Fine levied of a Reversion of Land to Uses, because the Use and Possession of the Land come instantly together, and the Conusor has no possible Time to bring a *Quid juris Clamat*, or *Quem redditum reddit*, for to receive an Attornment to perfect his Possession, it was resolved, that *Cestui que Use* should have the same Advantage, as if the Conusor's Possession had been perfected by Attornment and Seisin.

Fines and Recoveries. III

Vaugh. 50. 6 *Rep.* 68. *a.* But Attornment is now taken away by the 4 & 5 *Ann.* &c.

A Fine upon a Release cannot be intended to any other Use, but to him to whom it is levied.

2 *Leon.* *Cas.* 61.

Whether the Uses of a Fine *sur Grant* & *Render* may be declared by Deed, contrary to what they are in the Fine. *Moor, Cas.* 138, 249.

The Use of a Fine formerly might be declared by Parol, but it cannot, I apprehend, at this Day, by Reason of the *Statute of Frauds and Perjuries.*

Uses in Fines and Recoveries are to be proved, by producing the Deeds in Evidence. 3 *W.* 3. *K. B.*

Fines of *Cestui que Use* are as good as if levied of immediate Possessions. 1 *Rep.* 3. *Nelf. Abr.* 860.

If *A.* makes several Declarations of the Uses of a Fine or Recovery subsequent, the last Declaration shall stand; for each Declaration is to manifest the Intent of the Fine: Now all Acts follow the last Determination of the Mind, and consequently the Fine follows the last Declaration of their Intent. 5 *Co.* 26. *a.*

If a precedent Agreement be had for levying a Fine to Uses, and the Fine is accordingly levied, it shall be to those Uses and none other; and the Agreement and Covenants therein shall direct and guide the Uses.

A Fine levied of a Reversion or Rent to Uses, *Cestuy que Use* may distrain as if Attornment. *Vaugh.* 50, 51.

The Declaration may be made before, at, or after the Time of levying the Fine, for an Indenture subsequent may declare the Uses of a
Fine

Fine precedent. See the Diversity therein, 2 Co. 69.

That no Averment of Uses, by Proof of Witnesses, shall be admitted against an Use expressed in a Fine, but see if none are expressed, 5 Co. 26.

A general Covenant shall be to the special Uses of a Fine, and the special Operations thereof, according to the Intent of the Parties. 1 Bulst. 256.

Of Bars by Discontinuance.

Discontinuance (*Discontinuatio, Cessare*) signifies an Interruption or Breaking of, and is twofold, viz. Discontinuance of Possession, and of Process: The Effect of Discontinuance of Possession, which is that which concerns us here, is, that a Man may not enter upon his own Lands or Tenements aliened, whatever his Right be thereunto, by his own Authority, but must bring his Writ, and seek to recover Possession by Law. Co. Litt. 325. F. N. B. 191.

The Titles of Discontinuance and Remitter were great, large, swell'd Titles in our old Law Books, but they are now render'd very narrow by these Statutes, viz.

27 H. 8. cap. 10. Of Uses, as to Remitters, and some Assurances that at the Common Law were Discontinuances, are now made Bars, as Fines with Proclamations, by the 4 H. 7. cap. 24, & 32 H. 8. cap. 36. as to the Issue in Tail, though still they are Discontinuances in some Cases, as to him in Remainder or Reversion.

A Discontinuance of Estates in Land, is an Alienation of Lands or Tenements, made or suffered by Tenant in Fee-simple in Right of his Wife, or Church, Fee-Tail, or by any one seised *in auter Droit*, whereby the Issue in Tail, or the Heir or Successor, or those in Reversion or Remainder, are driven to their Action, and cannot enter. *Co. Litt. 325. a.*

There is a Discontinuance also in Fact, and in Law; in Fact, where there is a Transmutation of Possession; in Law, as by Conusee of Right by Fine; by which, notwithstanding the Conusor continues the Possession, yet the other is Tenant in Law, and the Right of the Estate-tail is discontinued or dissolved. *Co. Litt. 325. 2 Inst. 680. 3 Rep. 84. 8 Rep. 71. 1 Roll. Abr. 632, 633, 654.*

When *Littleton* wrote, an Estate in Lands might be discontinued five Ways, *viz.* by Feoffment, by Fine, by Release with Warranty, by Confirmation with Warranty, and by suffering a common Recovery; and this was to the Prejudice of Wives, Heirs, Successors, or those in Reversion or Remainder: So that where the Entry is taken away by Law, one cannot be his own Judge, but must have Recourse to Law; but many Persons are restrained by Statutes from making a Discontinuance.

By the 11 *H. 7. cap. 20.* a Wife is restrained to make certain Alienations of the Lands of the deceased Husband. See 2 *Dav. Abr. 570, 580.*

By the 32 *H. 8. cap. 28.* the Husband is restrained from Alienations of the Wife's Inheritance or Freehold. See 3 *Rep. 50, 51. 2 Inst. 681,*

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681, 682. 8 Rep. 71, 72, 73. 2 Danv. Abr. 581.

By the 1st of *Eliz.* cap. 19. 13 *Eliz.* 10. 1 *Jac.* 1. cap. 3. all Ecclesiastical Persons, viz. Deans, Chapters, Masters and Heads of Colleges, Masters of Hospitals, &c. are disabled to alien or discontinue their Estates.

Such Inheritances as lie in Grant, cannot by Grant be discontinued, because such Grant divesteth no Estate, but passeth only what he may lawfully grant. *Co. Litt.* 327. Nor can there be any Discontinuance by Exchanges or Letters Patent, because they do not require Livery of Seisin.

Observe, That where a Feoffment operates to a Discontinuance, there a Fine will make much more a Discontinuance.

Where an Estate is not discontinued, there regularly it is not barred by a Fine. 3 *Cro.* 827. *Moor* 170.

Discontinuance always takes away an Entry only, but is always by Wrong.

Note; To every Discontinuance, it is necessary that there should be a Devesting or Displacing of the Estate, and turning the same to a Right; for if it be not turned to a Right, they that have the Estate cannot be drawn to an Action. *Co. Litt.* 327.

Also, if Tenant in Tail levies a Fine, &c. this is no Discontinuance till the Fine is executed; because if he dies before Execution, the Issue may enter. *Co. Litt.* 32. 2 *Danv. Abr.* 572.

If Tenant in Tail of a Copyhold Estate surrenders to another in Fee, this makes no Discontinuance, except there be a Custom for it; but

but the Heir in Tail may enter, though this hath been a great Question. 1 Leon. 95. 2 Danv. Abr. 571.

If there be Tenant for Life Remainder in Tail, and Remainder in Tail, &c. and Tenant for Life and he in the first Remainder levy a Fine, this is no Discontinuance of either of the Remainders. 1 Rep. 76.

But if there be Tenant in Tail, Remainder in Tail, &c. and Tenant in Tail enfeoffs him in Reversion in Fee, or where there is Tenant for Life, Remainder in Tail, Reversion in Fee, and Tenant for Life enfeoffs the Reversioner, these are Discontinuances, because there is a mean immediate Estate. 2 Danv. 575.

Strangers how and when barred,
and who are such, and of the
Time of Claim.

Note, That no Fine bars any Estate in futuro. Raym. 149.

Strangers to Fines are those that are neither Parties nor Privies; Strangers have either a present or future Right on an apparent Possibility of Right growing afterwards, or a Right to something only issuing out of Lands. Wood's Inst. 245. And therefore are all Persons whatsoever, having no Impediment to make their Claims, who are barred by five Years after Proclamations, which Proclamations are but a brief Repetition of the Fine. 3 Rep. 90. See 31 Eliz. cap. 2. (as to Proclamations) if they make not
I 2 their

their Claim within that Time: But those that have a present Right, and under Impediment to make their Claim, as Infants, Feme Coverts after the Death of their Husbands, Persons of unsound Mind, after the Recovery of their Wits, Persons in Prison, after their Enlargement, Persons out of the Realm, after their Return from beyond Sea; these are barred, if they make not their Claim within five Years after the Impediment is removed; and the Saving in the *Stat. 4 H. 7. cap. 24.* extends only to Strangers to the Fine, and not to Parties or Privies.

An Infant must claim within five Years, *1 Inst. 246. a.* if the five Years for making a Claim after the Fine began in his Ancestor's Time; and if a Feme Covert, as a Feme Sole, levies a Fine by herself of Land, whereof she is seised in Fee, this shall bar her and her Heirs, unless her Husband enters and avoids it. And if a single Woman of full Age, having present Right, takes a Husband, and suffers five Years to incur, she is barred for ever. *Plowd. 366.* Because it was her Folly to marry such a Husband.

Civil Corporations, as Mayor and Commonalty, &c. being disseised, are barred by Fine and Non-claim, and five Years passed after Proclamations. But Masters of Hospitals, Bishops, Dean and Chapter, Prebendary, Parson, Vicar, Master and Fellows of a College, who are restrained by Statute to alien their Land, cannot be barred by Fine and Non-claim. *11 R. 78.* For if they were prohibited to bar their Right by Conveyances, it would be to no Purpose, if Power is left them by their Permission, or Suffer-

Sufferance, or Non-claim upon a Fine, to bar it.

Those that have no present Right, but a future one upon a precedent Case, and whose Right and Title accrue and devolve to them after the Proclamations, have five Years after the coming of such Right (such Strangers to Fines being void of Impediments) to make their Claim, as in the Cases of Remainder and Reversion: But if these have Impediments, they shall have five Years to claim in after the Impediments are removed, before their Laches shall be prejudicial to them. 2 Rep. 93. 9 Rep. 105. 10 Rep. 50. See 1 Ric. 3. cap. 7. 4 H. 7. cap. 24.

Those that have neither present nor future Right, but only a Possibility at the Time of levying the Fine, or whose Right groweth entirely after the Proclamations, or partly before or partly after, may enter and claim when they please within the Time of Prescription. 10 Rep. 49, 50.

And those that have neither present nor future Right, nor Possibility of Right to the Lands, &c. in the Fine at the Time of levying, but a Right to something issuing out of the same, as Rents, Common, a Way, &c. and are not bound at all; for the Fine extends only to secure the Right or Title of the Estate, but does not bind the Profits to be taken out of the Estate. 3 Rep. 124.

They that have Right of Reversion or Remainder expectant upon an Estate-Tail, or for Life, shall have five Years after their Title comes unto them, to make their Claim. 2 Co. Inst. 118.

The Interest in Estates, which may be barred by Fine, are either Interests by Common Law, or by Custom, as Copyholds, whether they are by Fee-simple, Fee-tail for Life or Years, Remainders or Reversions. 5 Rep. 124. 9 Rep. 105.

And also the Interests and Estates by *Stat. Merchant*, *Stat. Staple*, or *Elegit*, the Estates of Executors that hold Lands till Debts or Legacies are paid, may be barred. But more particularly,

If I have a Fee-simple Estate, and am disseised, and the Disseisors levy a Fine with Proclamations, and I do not claim in five Years after, I and my Heirs, Allowance being made for Impediments, am barred for ever. *Plowd.* 353, 356. 3 Rep. 79.

If I purchase a bad Title in Fee-simple, a Fine with Proclamations will bar him that hath Right, if he does not pursue it in five Years. 3 Rep. 79. 6 Rep. 105.

A Lessee shall have five Years from the Commencement of his Lease to claim. 2 Cro. 60.

He that has two Titles, shall have two five Years to make his Claim. *Jenk.* 6 Cent. *Cass.* 45.

If Tenant in Tail levies a Fine with Proclamations, according to the 4 H. 7. cap. 24. and 32 H. 8. cap. 36. this is a Bar to the Estate-tail, and the Issue in Tail, as aforesaid. 1 Inst. 372. a. 1 Inst. 298. a. 372. b. 373. a. 3 Rep. 87. 9 Rep. 105. And if Tenant in Tail is disseised, or hath Right of Action, and the Tenant of the Land doth levy a Fine with Proclamations, and five Years pass, the Right of the Estate-Tail, or Issue in Tail, is barred.

So the Donor may be barred, if Tenant in Tail die without Issue.

The like of the Laches of him in Remainder or Reversion, for it barreth him and his Heirs; but if Tenant in Tail makes a Feoffment, and the Feoffee levies a Fine with Proclamations, the Issue in Tail, after the Death of the Father, shall have five Years, for he is the first to whom the Right doth accrue, after the Fine levied.

And my Lord Coke, in 3 Rep. 71, 79. says, That if Tenant for Life, by Covin, levies a Fine with Proclamations, and five Years pass in his Life, yet the Lessor shall have five to make his Claim, after the Death of the Tenant or Lessee, notwithstanding the Forfeiture.

And if Tenant for Life makes a Feoffment in Fee, and the Feoffee levies a Fine with Proclamations, it shall not bind the Lessor. 3 Rep. 72. 1 Vent. 24. 9 Rep. 105. But he shall have five Years after the Death of Tenant for Life.

But upon a Disseisin of Tenant for Life, and Fine levied, the Lessor and Lessee have but five Years after the Fine, for the Disseisor comes in openly, and without the Consent of the Lessee; but *Quere* if Lessor be not within the second Saving of 4 H. 7.

A Fine with Proclamation, and five Years passed, &c. does bar the Lord in Ancient Demesne of his Writ of Deceit, 2 Inst. 513. And also a Writ of Error is barred thereby, 2 Inst. 518. But *Quere*, for the Fine was *coram non Judice*, and the Lord claims not the Land, but his ancient Seignory; but these Fines make a

Discontinuance, if they do not bar by the *Stat. of Non-claim*.

Observe, That no Fine shall bar any Estate in Possession, Remainder or Reversion, which is not devested and put to a Right. 3 *Rep.* 79. 5 *Rep.* 104. 9 *Rep.* 106. For he who has the Estate or Interest in him, cannot be put to his Action, Entry or Claim, because he has that already, which the Action, Entry, or Claim would give him; for the Law judges them always in Possession.

A Fine levied to deceive Creditors or Purchasers, shall not bar them, but shall be void as to them, as well as any other fraudulent Conveyance. See 13 *Eliz.* 3. 27 *Eliz. cap.* 4.

All the Saving in the Act of the 4 *H.* 7. *cap.* 24. relates to Strangers only, as to their present or future Right. 3 *Rep.* 87.

Infancy, Coverture, &c. of their Intail, gives no Claim to him, inasmuch as he is Privy. 3 *Rep.* 87, 91.

The Saving to avoid the Fine the Parties had in the Lands, relates only to Strangers, or to every Person not Party or Privy. 3 *Rep.* 90. 2 *Inst.* 523.

The 4 *H.* 7. *cap.* 24. recites almost the 1 *R.* 3. *cap.* 7. probably suspecting the Laws of *R.* 3. to be invalid.

See the 5 *H.* 4. *cap.* 14. 23 *Eliz. cap.* 3. for the Inrollment of Fines.

And if one enters and puts out a Copyholder, and the Disseisor levy a Fine of the Lands, and the Copyholder suffers five Years to pass after the Disseisin and Fine, without making any Claim, the Interest of the Copyholder and his Lord are thereby barred for ever; for this

this is not a Fine levied by Covin, because the levying the Fine is lawful, and the Disseisee may enter and bring his Action within five Years, and the Lord must needs know of the Disseisin.

Estates by *Stat. Merchant*, *Stat. Staple* and *Elegit*, may be barred, if they are out of Possession, and a Fine levied, and five Years pass without Claim. *1 Rep.* 124. *2 Inst.* 517.

He that hath a Right of a Remainder or Reversion expectant, upon an Estate of Freehold, has five Years allowed him after the Remainder or Reversion accrueth: So if Tenant for 99 Years, if he so long lives, levies a Fine, and dies, they shall have five Years after his Death to avoid the Fine.

Also, if he that has Right be beyond the Sea, and never return, the Heir is not limited to Time; so it is of an Infant having a present Right, and dying in his Infancy, his Heir is not limited.

The like of a Person *non compos* by the Act of God; or a Man in Prison, by the Act of the Law; or a Feme Covert, by her own Act, if she dies so; being no Parties to the Fine. *2 Inst.* 319, 320. *Plowd.* 366.

If one makes a Lease for Years, to commence after the Expiration of another Lease or Term for Years then in *esse*, the first Lease for Years determines, the second Lessee doth not enter, but suffers him in Reversion to enter, who makes a Feoffment, and five Years pass, the Interest by the second Lease is barred. *1 Cro.* 77.

The Time of Claim on Fines.

A Lessee for Years shall have five Years from the Commencement of his Lease to claim.
2 Cro. 60.

Five Years are given after a Remainder doth fall, and five Years after the Forfeiture of Tenant for Life, and five Years for a Woman to claim her Dower after her Husband's Death.
Plowd. 374. *Dyer* 3. 19 *H.* 8. 7.

An Infant shall have five Years after he comes to his full Age, although he was in his Mother's Womb at the Time of the Fine levied.
Plowd. 539. Madmen, &c. have five Years, after Cure of their Maladies, although the Infirmary happen after the Fine levied; and before the last Proclamation. *Plowd.* 339, 367, 375, 377. *Dyer* 3. Estrangers, out of the Realm at the Time of the Fine levied, shall have five Years after their Return; so also, if they were in *England* at the Time of the Fine levied, and within five Years be sent into the King's Service, and by his Commandment. *Plowd.* 366.

If the Party be beyond Sea at the Time of the Fine levied, and never return, but die there, the Heir shall not be barred at all. Sir *Thomas Cotten's Case*, 20 *Eliz.* If he be in *Ireland* or *Scotland*, he shall be said to be out of the Realm. 4 *H.* 7. *Plowd.* 367. They who have divers Defects, have five Years after the last Infirmary removed.

But if there be divers Impediments, and once wholly removed, and afterwards they fall into the like again, and die, the first five Years be-

gun in the Ancestor's Time shall proceed, and be reckon'd to the Heir, and he shall at the End be bound, as the Ancestor should if he had remain'd free all the five Years. *Plowd.* 375. *Dyer* 137.

If he that hath Right be beyond Sea at the Time, and never return, the Heir is not limited to Time. And so it is of an Infant being Party to the Fine, having present Right, if he dieth in his Infancy, his Heir is not limited. And so it is of a Person *non compos mentis* by the Act of God. Or a Man in Prison, by the Act of the Law. Or a Feme Covert, by her own Act, if she dies so; being Parties to the Fine. 2 *Co. Inst.* 319, 320. *Plowd.* 366.

Ingrossing of Fines.

FINES of Reversions, Remainders, Rents, Services, &c. may be ingrossed by the Chirographer, which is nothing else but entering of the Concord with the Chirographer, and the writing and delivering the Indentures. *F. N. B.* 147. *H. 4. cap.* 14.

As to the Inrollment of Fines, see 23 *Q. Eliz.* cap. 3. *West's Symb. Sect.* 173. *cap.* 157.

Of Remitter.

And how and in what Manner a Fine works and operates by Remitter.

AND it is to be observ'd, That a Remedy is oftentimes to be had, without applying to the Courts of Justice; and this may be obtained by an Act of Law, by an Act of one of the Parties, and by the Act of all Parties.

1. By Act of Law, the Party may have Remedy without Suit in Court. 1st, In Things personal, as if the Debtor makes the Debtee Executor, *Plowd.* 543. he may detain so much of the Goods and Chattels, as will pay his Debt.

2^{dly}, In Things real, as where one's Entry is taken away by Descent or Discontinuance, if he comes to the Possession without Folly or Conviction, he shall be remitted.

And by *Litt.* 659. 1 *Inst.* 347. b. 348. a Remitter, from the Word *remittere*, to send back, is where a Man has two Rights or Titles to Lands, and is seised of them by his latter Title; which proving defective, he is restored and remitted to his former and surer Title, by Operation of Law, because, *Quod Prius est Verius est.*

A Remitter must be to a precedent Right, for regularly to every Remitter there are two Incidents, *viz.* an ancient Right and a defeasible Estate coming together. The Reason of this Invention of Law, is in Favour of Right, and the Title which is first and most ancient,

is alway preferred. *Dyer* 68. *Finch's Law* 119. In Remitter to restore Rights the first Interest must be a Right, and not a Title of Entry; and there can be no Remitter before an Entry.

1 *Inst.* 348. 2 *Bulst.* 29.

And if an Husband alien Lands that he has in Right of his Wife, and after take an Estate again to him and his Wife for their Lives; this is Remitter to the Wife; for the Alienation is the Act of the Husband, and not of the Woman; yet if the Alienation be by Fine in a Court of Record, such a Taking again afterwards to the Husband and Wife shall not make the Wife to be in her Remitter, she being excluded by the Fine for ever. *Terms de la Ley* 519.

Remitter will not be allowed against a Man's own Alienation. 1 *Inst.* 354.

But if a Tenant in Tail levies a Fine with Proclamations, and after the same is reversed by Writ of Disceit; in this the Issue in Tail is remitted, and shall avoid all the Estates made, because the Fine is void betwixt the Parties.

3 *Cro.* 471. *Cary* and *Dancy*; see *Moor Rep.* Case 106. *Plow.* 367. *Moor*, Case 257. *Bendl.* 30.

The Operation of these Fines are sometimes by Extinguishment of Rent, &c. reserved, see *Moor*, Cas. 249. *Hob.* 3. 3 *Co.* 51. *Bulst.* 45. 2 *Cro.* 699. *Dyer* 213.

When the Entry of a Person is lawful, and he takes an Estate in the Land for Life, or in Fee, &c. except it be by Matter of Record, or otherwise, to conclude him or estop him, he shall be remitted. 1 *Inst.* 363.

On

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On Remitter of Issue in Tail, Leases and other Charges on the Land will be avoided. *Litt.* 659, 660.

If a Disseisor be disseised, and a second Disseisor levy a Fine; in this Case, if the first Disseisor enter within the Year, this by the Common Law had preserved the Right of the Disseisee; so that in this the Right of one that might have claimed, and did not, was preserved. *2 Co. Inst.* 518.

The Issue in Tail is perpetually barred by the Fine of the Tenant in Tail with Proclamations, notwithstanding that the Discontinuee is disseised by the Father, the Issue may claim within the Time of the Proclamations; and no Remitter shall be had after a Fine with Proclamations. *Moor* 114. Case 256.

Note, That a Disseisin is an unlawful and wrongful Putting out of him that is actually seised of a Freehold. *1 Inst.* 277. Disseisin always implies a Wrong. *Co. Litt.* 153. *b.* *Carter* 162, 163.

Or a Disseisor is he who enters into Lands or Tenements where his Entry is not congeable, and ousteth him that hath the Freehold, without Order of Law. *Litt.* § 179. *Cro. Car.* 303. *pl.* 6.

Disseisin in this Place is understood of such Lands and Tenements whereunto an Entry may be made, and not of Things which lie in Grant, as of Rents, Common, &c. *Co. Litt.* 181. *a.*

Note; Every Entry is not a Disseisin, but to make a Disseisin there must be an Ouster of the Freehold. *Co. Litt.* 153. *Carter* 162, 163. Disseisin is by Force or without Force; where

it is lawful, and where not, see *Bract. b. 4. c.*

4. *Britton* 42, 43, 44.

How many Ways a Disseisin may be committed, see *Seldon's Fleta, b. 4. c. 1.*

Sur Disseisin en le poſt is used for paſſing Common Recoveries.

How a Fine bars by Estoppel.

AN Estoppel, from the *French Estouper, i. e. Oppilare or Obſtipare*, is when a Man's own Act or Acceptance ſtoppeth to alledge or plead the Truth. 1 *Inst.* 352. a.

There are three Kinds of Estoppels, viz. by Matter of Record, by Matter of Writing, and by Matter *in pais*. *Co. Litt.* 352. See there also the Rules concerning them.

If a Feoffment be made to two and their Heirs, and the Feoffor afterwards levies a Fine to them two, and the Heirs of one of them, this will be an Estoppel to the other to demand a Fee-simple according to the Deed; for the Fine shall enure as a Release. 6 *Rep.* 7-44.

Tenant in Tail suffers a Recovery that his Issue may avoid, he himself shall be estopped and concluded by it, and may not demand the Land against his own Recovery. 3 *R.* 3.

Estoppels always descend upon the Heir General, and upon the Heir at Common Law, and upon none others; and the Daughter that comes in by *Poſſeſſio Fratris* shall escape an Estoppel of the Father. *Hob.* 31. *Co. 1 Inst.* 352.

In every Estoppel Privity is required, for it ought to be reciprocal, viz. to bind the Parties;
so

so regularly, a Stranger shall never take an Advantage, nor be bound by an Estoppel; but Privies in Blood, as the Heir; Privies in Estate, as Feoffee, Lessee; and Privies in Law, as the Lord by Escheat, Tenant by Courtesy, in Dower, the Incumbent of a Benefice, and others that come in by Act of Law, or in the *Post*, shall be bound, and take Advantage by Estoppels. *Co. 1 Inst. 352. 30 H. 6. Goldf. 147.*

A general Recital is no Estoppel, but a Recital of a particular Fact is. *1 Shower Rep. 59.*

And generally where a Recital is no Estoppel, yet where the Recital is material it is. *2 Leon. Case 17. see Cro. Eliz. 362. pl. 24.*

A Fine levied by a Remainder Man in Tail binds by Estoppel; for this see the Case of *Hollis* against *Carr*, *Pasch. 28 Car. 2. in Cant.* where it is said it would be very hard to decree the Execution of a Fine in that Case; for that the Father of the Defendant executed the Deed, and the Father, who never sealed it, being Tenant in Tail, the Son, who sealed, could have no present Right; and how could a Court of Equity decree a Fine in that Case, whereby a Right may indeed be extinguished, but can never be transferred, and by which no Use can be declared; for tho' such Fine be good by Estoppel before the Estate-tail descends to the Issue, yet no Use can be declared thereupon. *2 Mod. 90.*

Of Warranty.

Warranty is either General or Special, in Deed and in Law.

General Warranty, which is by one and his Heirs against another and his Heirs, particular when restrained to a certain Person.

Again, Warranty in Deed is an express Warranty from the Warrantor. 1 *Inst.* 384. a.

Warranty in Law is contained in the Word *Dedi*, and is a Warranty in Law to the Feoffee and his Heirs during the Life of the Feoffor, but not in the King's Case. 4 *Rep.* 82.

And Warranty is a Covenant Real annexed to Lands or Tenements, whereby the Bargainor or Seller, &c. are bound to warrant and secure the same to the Bargainee or Buyer, and his Heirs, that they shall quietly hold and enjoy the same; and either upon Voucher, or by Judgment in a Writ of *Warrantia Chartæ* to yield other Lands and Tenements to the Value of those that shall be evicted by a former Title. 1 *Inst.* 365. a. These are favoured in Law, being a Part of a Man's Assurance.

Warranty concludes and bars the Warrantor himself of the Lands so barred for ever, so that all his present and future Rights, that he hath or may have therein, may hereby be barred. 4 *Co.* 201. 12 *Co.* 97. *Co. Litt.* 265, 365.

Warranty is discharged or defeated, 1st, By Release of all Warranties. 2^{dly}, By a Release of all Covenants Real. 3^{dly}, By a Release of all Demands. But a Release by Tenant in

K

Tail

Tail of the Warranty shall not bar the Issue.
See Co. 1 Inst. 393.

Forms of General and Special Warranty, see among the Precedents. See the 4 & 5 of Queen Anne, c. 16.

*The Form of a General Warranty
in a Fine, with a Release from
divers Conusors and their Heirs,
as thus, by Husband and Wife.*

AND the Agreement is such, *to wit*, that the aforesaid *A. B. C.* and *D.* do acknowledge the aforesaid Tenements, with the Appurtenants, to be the Right of him *E.* so that the said *E. F.* have the same as from the Gift of *A. B. C.* and *D.* and that they release and quit all Claim from themselves, *A. B. C.* and *D.* and their Heirs, to the aforesaid *E. F.* and their Heirs for ever. And furthermore, the same *A. B. C.* and *D.* have granted for himself, and the Heirs of him *A.* that they will warrant the aforesaid Tenements, with the Appurtenants, to the aforesaid *E.* and *F.* and the Heirs of him *E.* against all Men for ever. And for this, &c.

If each of the Conusors warrant a Part, as is usual, one may give a General Warranty, and the other a Special Warranty, thus:

And furthermore, The same A. and B. do grant for themselves, and the Heirs of the
said

said *A.* that they will warrant the aforesaid Tenements, with their Appurtenants, to the aforesaid *E.* and *F.* and to the Heirs of him *E.* against the said *A.* and *B.* and the Heirs of *A.* for ever. And farther, he the same *C.* has granted for himself and his Heirs, that they will warrant the aforesaid Tenements, with their Appurtenants, to the aforesaid *E.* and *F.* and to the Heirs of the same *E.* against the aforesaid *C.* and their Heirs, for ever.

And furthermore also, The same *D.* has granted for himself and his Heirs, that they will warrant the aforesaid Tenements, with their Appurtenants, to the aforesaid *E.* and *F.* and the Heirs of him *E.* against the aforesaid *D.* and his Heirs, for ever, &c. For this, &c.

*The Form of a Warrant of Attorney
on a Fine is thus:*

Trinity Term, 2d of George II.

Devonsh. *C. F.* puts *J. M.* his Attorney in his Stead, to prosecute his Writ of Covenant against *W. F.* of Lands and Tenements in *B.* and *L.*

Of a Fine by Baron and Feme.

Husband and Wife are Tenants in Special Tail; Husband levies a Fine and dies, the Estate-tail is barred, and not dissolved or

determined, but has Continuance as long as the Wife lives, as to herself and the Heirs in Tail in Remainder, 9 Rep. from 138 to 141. which are not the Issue of the Husband, for they are all barred; and although the Feme has an Estate-tail, she cannot bar it by levying or suffering a Recovery, because she was barred before by the Priority of the Act of her Husband. 9 Rep. 14. b. Hob. 257, 259.

But a Feme Covert levying a Fine solely, this shall bind her and her Heirs, if the Husband does not enter and avoid. 10 Rep. 43. a. 1 Roll. Abr. 346. 3 Rep. 8. a. b. Hob. 225.

And Husband and Wife, Tenants in Special Tail, Remainder to B. in Tail, Remainder in Fee to C. and the Husband solely levies a Fine, and his Wife enters; it is a Remitter to her and to B. and C. in Remainder; but the Issue of the Husband is barred. Hob. 259.

And where Baron and Feme are Tenants in Special Tail, the Husband's Fine in the Wife's Life-time is a Bar to the Issue; although the Wife may, if she survive, be remitted, if any Estate is limited to her upon her Husband's Fine; if not, she may enter as Tenant in Tail. Hob. 257, 259.

If a Woman levies a Fine by the Name of a Wife of *J. S.* this Fine is meerly void, *quia constat per Record*, that she is Covert. Sid. 122.

When Baron and Feme join in a Fine of Lands, it shall be intended the Inheritance of the Wife, if the contrary be not shewed.

Feme Covert by Warranty in a *Fine sur concessit*, is bound in Action of Covenant. 2 Saund. 180. Wotton and Hele, 1 Mod. Rep. 66.

The Husband after Marriage assured to the Wife a Jointure; they both levied a *Fine sur Conuſance de Droit come ceo, &c.* of the Gift of the Husband; this is no Bar to the Wife of her Dower, for the Election is not given to the Wife to claim her Jointure till the Death of her Husband. *Dyer 358.*

If Baron and Feme bound to levy a Fine upon reasonable Request, If Request be made when the Wife is *enſeint*, or ſick, it is not reasonable, and the Request to the Husband is not good. *Moor 124.*

Baron and Feme levy a Fine, the Feme being within Age, the whole ſhall be reverſed; and not only *quoad uxorem*. In *Worſley and Charrock's Caſe*, quoted in the *Lord Cromwell's Caſe*, 2 Co. 71. 1 *Leon. 114.*

Baron ſeiſed of Lands in the Right of his Wife, the Baron and Feme both joined in Exchange with a Stranger for other Lands, which Exchange was executed; the Baron and Feme ſeiſed of the Land taken in Exchange, aliened the ſame by Fine, yet the Wife after the Death of her Husband may enter into her own Land notwithstanding that Fine. 1 *Leon. 285.*

A makes an Eſtate to Friends in Truſt, to the Uſe of his Wife, to commence after his Death; the Wife joins in a Fine with her Husband of the Lands leaſed in Truſt, this Fine ſhall dock the Truſt; and there being an Extent upon the Land leaſed, this Truſt ſhall not prevent the Extent by Reaſon of the Fine.

Of Fines by Tenant for Life, and
for Years.

IF either the Conusor or Conusee be seised, at the Time of the Fine being levied, of an Estate of Freehold in Fee-simple, Fee-tail, or for Life, in Possession, Reversion or Remainder, whether the same be by Right or by Wrong, the Fine will be a good one in Point of Estate, and being so seised may levy a Fine thereof to a Stranger, and it will be good; but if neither Party have any Thing in the Land, the Fine will be in many Cases void, and to be avoided by the Plea, that neither of the Parties had any Thing at the Time of levying the Fine, in the Estate.

If Tenant for Life by Covin levieth a Fine with Proclamations, and five Years pass in his Life-time, yet the Lessor shall have five Years to make his Claim after the Death of the Tenant or Lessee, notwithstanding the Forfeiture. 3 Rep. 72, 79. And if Tenant for Life makes a Feoffment in Fee, and the Feoffor levieth a Fine with Proclamations, it shall not bind the Lessor, 3 Rep. 79. 1 Vent. 241. 9 Rep. 105. but he shall have five Years after the Death of the Tenant for Life; but upon a Disseisin of Tenant for Life, and Fine levied, the Lessor and Lessee have but five Years after the Fine, for the Disseisor comes in openly, and without the Consent of the Lessor. *Quare*. If bound within the second Saving of the 4 H. 7. Saving

Saving to all Persons such Actions, &c. as shall come after the Fine levied, &c. and shall he therefore have five Years after the Action accrueth?

If Tenant for Life grants a greater Estate by Fine than for his own Life, it is a Forfeiture; and if there be Tenant for Life, Remainder for Life, and the Tenant for Life levy a Fine to him in Remainder, and his Heirs, both their Estates are forfeited, *viz.* Tenant for Life for levying the Fine, and the Remainder Man for accepting it. 2 Lev. 209.

And if a Widow, having an Estate in Dower, accept of a Fine, and by the same Fine render back the Land for 100 Years, &c. this is a Forfeiture of her Estate within the Statute 11 H. 7. c. 20. by which Statute she may not make a greater Estate than for her own Life; if she does, it is a present Forfeiture. 2 Cro. 689.

Where a Tenant for Life levies a Fine for a greater Estate the Fine may be good, but it is a Forfeiture of the Estate of Tenant for Life, whereof he in Remainder may take present Advantage, and enter; and where a Person enters for a Forfeiture, all Estates are avoided. Dyer 111.

But if Tenant for Life levy a *Fine sur Grant & Release* to the Conufee, for Life of the Tenant for Life, or by Fine grant a Rent out of the Land for a longer Time, the Fine is good, and there will be no Forfeiture of the Estate of Tenant for Life.

Also if a Fine be levied by Tenant for Life to a Stranger, who thereby acknowledges all his Right to be in the Tenant for Life, and

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release and quit Claim to him and his Heirs, and go no farther, the Fine is good, and no Forfeiture of the Estate of Tenant for Life, for his Estate is not changed thereby, and may enure to him in Reversion. 27 *Ed.* 1. 1. 44 *Ed.* 3. 36.

And if there be Tenant in Tail, for Life, or Remainder in Tail, &c. and the first Tenant in Tail or for Life bargains and sells the Land by Deed inrolled, and levies a Fine to the Bargainee, the Remainders are not bound, for the Law adjudges you always in Possession.

A Fine levied by Tenant for Years or Life, or Copyholder, who continues in Possession and pays the Rents, shall not bind the Lessor tho' after five Years Non-claim; also the Lessor shall have five Years to claim after the Determination of their Estates. 3 *Rep.* 77, 78.

Tenant for Life, Remainder in Tail, levies a Fine, he in Remainder shall have five Years after the Death of Tenant for Life. *Litt. Rep.* 217.

Lessee for Years at Will, Tenant by Court-Roll, who pretend no Title to the Inheritance, but intend the Disinheritances of their Lessors or Lords, cannot by Fine bar them of their Inheritances; therefore if they make a Feoffment by Assent or Covin that a Fine may be levied, it is the rather void.

But it is said the Lessor must claim within five Years after the Term is expired. 3 *Rep.* 77, 79. 9 *Rep.* 105. *Coke's Comp. Copyholder*, § 55. 3 *Rep.* 78. 1 *Vent.* 241.

And if a Lease is made for Years, and the Lessee or another doth levy a Fine with Proclamations, and the Lessee does not make his Claim

Claim within five Years, the Lessee is barred of his Interest for ever, and cannot be relieved in Equity. 5 Rep. 124. 9 Rep. 105.

And where there is Tenant for Life, Remainder in Tail; Remainder in Tail, Tenant for Life, and he in the first Remainder in Tail levy a Fine to J. S. in Fee, who renders therein thirty Pounds *per Ann.* to the Tenant for Life; then he in the first Remainder in Tail dies without Issue, and he in the second Remainder in Tail enters, and the Tenant for Life distrains, and it is held that he might; for this Fine is no Discontinuance of the first or second Remainder, because each Party gave but what he legally might; this shall be construed to be the Grant of the Tenant in Tail first, and the Grant of the Tenant for Life afterwards, to prevent a Forfeiture. 1 Rep. 76, 77.

Fines levied by Lessee for Years, or at Will, or Copyholders, are not within the Statute 4 H. 7.

Tenant for Life and he in Remainder in Tail join in a Fine, this they may lawfully do, and bar both their Estates. 3 Rep. 60. b.

Of Certioraries.

To remove the Record of a Fine into *Chancery*.

TO remove (when Occasion requires) the Record of a Fine into the High Court of Chancery, and from thence by *Mittimus* into the King's Bench, or Common Pleas,

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Pleas, if it came from thence, and thereon to proceed to Execution. See the 37 H. 6. 16.

Certiorari with a *Mittimus* to renew a Fine bearing Date before the Fine came into the Chancery; good enough. 1 R. 3. 4.

In a Writ of Error to reverse a Fine the Record itself shall not be removed, but the Transcript thereof, because a Record which comes into the upper Bench shall not be remanded back; and if the Judgment be affirmed, there is no Chirographer to ingross the Fine. 40 Aff. 19. 29 Aff. 43.

Obs. That the Lord Chancellor may with his own Hand deliver the Record of a Fine without *Certiorari*. 5 R. 2. c. 16, 28. and 29 H. 8. Dyer 29, 32.

The Form of the *Mittimus* and *Certiorari*, see among the Precedents.

A Certiorari of the Transcript of the Foot of a Fine.

GEorge the Second, &c. To the Treasurer and Chancellor Greeting: Because for some certain Causes we will to be certified upon the Tenor of the Foot of a certain Fine levied in our Court before our Justices long ago, or last Itinerant at *M.* in the County of *O.* by our Writ, in the Year, &c. before *K.* and his Associates, then Justices, &c. of the Bench, by his Writ between *B.* Demandant, and *C.* Tenant, of one Messuage, with the Appurtenances in *M.* We command you, that
you

you search in the Feet of the Fines of the same Circuit, at the Time aforesaid levied, or of the Fines before the aforesaid Justices, in the Year aforesaid levied, which are in our Treasury, under our Custody, as they say, the Transcript of the Foot of the Fine aforesaid, to us into our Chancery, under the Seal of the Exchequer, distinctly and openly, without Delay; you send, and this Writ. *Teste, &c.*

A Mittimus.

GEORGE the Second, *&c.* to the Justices of the Bench Greeting. We send to you, under the Foot of our Seal, *&c.* the Tenor of the Foot of a certain Fine levied in the Court of, *&c.* in the Year, *&c.* before *W.* and his Associates then Justices of, *&c.* of the Bench at *Westminster*, by our Writ between *J.* Plaintiff, and *W.* Deforciant, *de tanto; &c.* whom before us in our Chancery we have caused to come, to you we send, under the Foot of our Seal, that in the Plaint that is before you by our Writ, between *J.* Son of *J.* Demandant, and *E.* Tenant of the same Mesuage, *&c.* you may be able the more securely to proceed, *&c.* *Teste, &c.*

How and where Fines may be avoided.

A Fine may be avoided for good Cause in many Cases; as, 1st, A Fine may be avoided by Death of all or some of the Parties, before the King's Silver is enter'd. 2^{dly}, By Deceit or Covin in procuring it. 3^{dly}, For some notorious Error in the Proceedings. (A small Error will not avoid it.) See 13 *Eliz. cap. 3.* 10 & 11 *W. 3. cap. 14.* 4^{thly}, By Claim, Entry, or Action of him that has the Land, if he claims in due Time. See 21 *Jac. 1. cap. 16.* 4 & 5 *Ann. cap. 16.* 5^{thly}, By Plea, of which see before, *Of Pleas to avoid a Fine*; and sometimes by *Writ of Deceit*. See before, *Of Writs of Error to avoid a Fine*, and *How brought and concerning Bars to a Fine*.

And a Fine may be avoided in Equity, where a Claim is to be of an Equity, within five Years after levying the Fine; the Claim must be by *Subpœna*, and not by Entry. *Chanc. Rep.* 279.

A Fine levied, and five Years pass'd, without bringing of a Writ of Error, is a good Bar by the Word *Actions*, within the second Saving of the *Stat. of 4 H. 7. cap. 24.* *Cro. Jac.* 333.

Note; If the King's Silver be enter'd in Paper, or on the Back of the Writ of Covenant, as is usual, and after this the Party dies, the Fine shall not be vacated by this, but may be finished. See 1 *Cro.* 469. *Dyer* 220, 246. 5 *Co.* 39. *Hob.* 330, 403, 404.

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An Infant may avoid a Fine by Writ of Error during his Minority, but not afterwards. 2 Co. 230. *Dyer* 201.

If the Lands lie in several Counties, and there be not several Writs of Covenant for every County, it will be Error. *Dyer* 225. 15 Ed. 4. 13.

For Repugnancy, see 5 Co. *Tey's Case*.

Where a Fine is good or not, see *West's Symb. Part 2. Tit. Fines*.

Who is to bring the Writ of Error, see 1 Leon. 315, 317. 2 Cro. 11, 90, 392. 2 Leon. 139. *Owen* 21.

Error in a Fine cannot be alledged against the Record itself. *Telv.* 34.

Fine levied by one of the same Name of the other's Land, may be avoided by Deceit, or pleading 34 H. 6. 19.

By the *Stat. Geo. 1. cap. 13.* it is Enacted, That all Writs of Error, wherein there shall be any Variation from the original Record, or other Defect, may be amended by the Court, and made agreeable to the Record.

Where a Writ of Error is brought in *K. B.* to reverse a Fine levied in *C. B.* the Transcript only, and not the very Record of the Fine, is removed; but if the Court of *K. B.* adjudge it erroneous, then a *Certiorari* goes to the Chirographer to certify the Fine itself; and when it comes up, it is cancelled. 1 *Salk. Rep.* 341.

The Court of *K. B.* will not reverse a Fine of Lands for Error, without a *Scire facias* returned against the Ter-tenant. 1 *Salk.* 339.

A Writ of Error may be brought in *B. R.* to reverse a Fine in *C. B.* and the Transcript only,

only, and not the very Record, is removeable in those Cases only.

Error to reverse a Fine in *Chester*; the Conuſance of it was taken by one, and the *Dedimus poteſtatem* to him and another jointly; and this was erroneous.

Note; No Fine, or Proclamations upon Fines or common Recoveries ſhall be traueſſable by Writ of Error; for incongruous Spelling, Rature, Interlining, Miſ-entering any Warrant of Attorney, or of any Proclamation miſ-returning, or not returning of the Sheriff, or other Want of Form of Words, and not of Matter of Subſtance. See 23 *Eliz. cap. 3.* and 5 *Geo. cap. 15.*

Fines avoided by Error.

THE Avoiding of a Fine by one defeats it againſt all, though they were bound before by their Non-claim, which ſets at large all other Rights above them. 16 *Ed. 2. Plowd. 358. Stowell's Caſe.*

No Error but ſuch as is notorious ſhall avoid a Fine; for in this the Rule is *Conſenſus Tollit Errorem.*

If there want an Original, or if there be a Writ, and that doth bear Teſte after the *Dedimus poteſtatem*, or the *Dedimus poteſtatem* be to two, and one alone taketh it, this, it is ſaid, is Error, for which the Fine may be reversed; but for the Teſte of the Writ of Covenant, after the *Dedimus poteſtatem*, this is amendable. *Latch Rep. 186.*

But no Error may be alledged to reverse a Fine, where the Error is contrary to the Record or Certificate of the Justices, as to say, the Commissioner was not a Knight, when the *Dedimus potestatem* saith he was. *Jenk. 6 Cent. Cas. 53. Dyer 89. 2 Cro. 11. Telt. 33, 34. Hugh. 940. Case 9. 646. 16, 17, 18.*

Where Error is in the Proceeding of the Proclamations, there they only shall be reversed, and the rest of the Fine shall stand good at Common Law. *Hughes 938. Ca. 2, 3, 4.*

An Infant may avoid a Fine by a Writ of Error, during his Minority, but not after. *2 Co. 230. Dyer 201.*

One may bar himself of this Writ of Error by a Feoffment of the Land, or a Release of his Right to the Land, or by a Recovery, or by a Fine, and five Years past. *Cro. Eliz. 69. 2 Co. Rep. 77. Co. 2 Inst. 518. 2 Cro. 432. 2 Leon. 263.*

And by making of a Lease for Years, he may suspend it. *Owen's Rep. 21. Style's Rep. 246, 252. Cro. Eliz. 469. Golds. 181.*

Variance in the Persons, Render, or Estates of Lands, except very gross, will not avoid it. *Hughes 939. 10 Co. 946.*

For Repugnancy, see *5 Co. Tey's Case*. Where a Fine is good or not, *Hughes's Abridgm. Tit. Fines. Vid. also West's Symb. Shap. Touchstone of Assurances. Ibid.*

Error to reverse Fines.

A Writ of Error is brought in B. R. to reverse a Fine in the Common Pleas; there the Record itself is not sent, but a Transcript thereof, because we have no Chirographer to receive it. *Per Barkley, March 10.*

P. sued two Writs of Error, the one to reverse a Fine, the other to reverse a common Recovery, by Reason of his Nonage: The Case was, E. was Tenant *pur Vie*, in Right of his Wife, the Remainder to P. in Fee. *Per Cur'*, this Writ is well brought, because it is no Error in the Record, but an Error in *Fait*; and if two Infants bring a Writ of Error, they must assign the Errors severally. 2. The Writ of Error, upon the Fine, makes mention of 105 Acres, and the Fine certified is 150 Acres. To which it was answer'd, That the Fine agreeth with the Record, which is with the *Custos Bre-vium*; but *Wray* said the principal Part of the Fine is with the Chirographer, and it ought to agree with it, else it is not good; and the Fine was reversed *quoad* the Infant only. *Piggot and Russel's Case, Cro. Eliz. 115, 124.*

Error to reverse a Fine levied in *Exeter* upon a Complaint, in Nature of a Writ of Covenant. Error assigned, That the Plaintiff was *duobus Tenementis* in *Exeter*; which is uncertain, for *Tenementis* contains several Things, as Rent, Land, Meadow; as an *Ejectione firmæ* of a Tenement is ill; Indictment that one enter'd *Tenementum* with Force, is not good, and the Judgment was reversed. *Quere*, If a Fine levied

in *Exeter* be good? for they cannot prescribe to levy Fines, for then the King should lose his Fine *pro Licentia Concordandi*. Cro. Eliz. 116. *Austin* and *Steen* against *Courtney*.

Error to reverse a Fine in *Chester*, the Conufance was taken of it by one, and the *Dedimus potestatem* to him and another jointly, and this was erroneous.

In *Argenton* and *Westover's* Case, 1 Error, it appears by the Record, that the Caption of the Conufance of the Fine was before Sir Roger *Manwood*, 27 March 27 Eliz. and the Writ of Covenant and *Dedimus potestatem* bore Date the ninth of April, and so the Conufance taken without Warrant; and by the Statute of 23 Eliz. the Day of the Caption is always to be certified, but the Court over-ruled it, and said, then they must reverse divers Fines.

2. That by the Caption of the Issue upon the *Dedimus potestatem*, the Land was given to *W.* and his Wife, and to the Heirs of the Body of the Husband, of the Body of the Wife begotten, and the Fine ingrossed was to the Heirs of the Body of the Husband on the Wife begotten, so is variant; but all the Justices conceived it was not material, for in both Cases the Feme had but an Estate for Life, and the Baron an Estate-tail, and the Words are of the same Sense. 3. The Writ of Covenant and the Caption was *de Manerio & Tenement*. and 5 l. Rent, and the Fine ingrossed was *de Manerio & Tenementis*: But it was said and agreed that the Course of Fines is, that if the Rent be under 5 l. that they used not to mention it in the Fine ingrossed. The Caption was *si contingat* the Husband to die without Issue, that it should

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remain

remain over; and the Fine ingrossed was *si contingat* if the Husband and Wife to die without Issue, &c. so it is variant: But it was held all one, for the Estate in Remainder is always limited upon the more long Estate, which is the Estate-tail, and the Fine was affirmed. *Cro. Eliz.* 275. *Argenton and Westover.*

Error assigned was, That the Writ of Covenant, upon which the Fine was levied, did bear Date the 10th of *August* 12 *Eliz.* returnable *Mense Michaelis eodem Anno*, (which was the 27th of *October*) and that a *Dedimus potestatem* issued to certain Commissioners to take the Conusance, which bore Teste the 11th of *August* in the same Year, and that the Feme, under whom the Claim was made, died the 17th of *October, eodem Anno*, before the Return of the Writ of Covenant; the Defendant pleaded, that, after the Fine levied, the Plaintiff enfeoffed *J. S.* of the said Lands; the Plaintiff replied, that he did not enfeoff, &c. and upon that they were at Issue: It was found he enfeoffed *J. S.* of 20 Acres, Parcel of the 120 Acres, but not of the Residue. An Exception was taken to the Assignment of the Error, *viz.* That the Wife Conusor died before the Return of the Writ, which is contrary to the Record, and not to be admitted. The Difference is this, between a Conusance taken in Court, which is always after the Writ returned, there the Party cannot say the Conusor was dead before the Writ returned; but against a Conusance taken in *Pais* before Commissioners, he may assign for Error the Death of the Conusor before the Return of the Writ, for that is not contrary to the Record; for the Conusor may die

die after the Conufance, and before the Return of the Writ; and Death is a Countermand of the Conufance, and the Recording after erroneous; and *per Cur'*, the Fine is to be reversed for the 100 Acres, and stands good for the Refidue, and the Feoffment only destroys the Title of Error for that Part. *Cro. Eliz.* 468. *Wright's Case.*

In *Arundel's Case*, three Errors assigned.

1st, Because the Writ of Covenant, whereupon it was levied, bore Teste the second of Jan. 21 *Eliz.* and the *Dedimus potest.* to take the Conufance bore Date the same second Day of January, reciting *Quod cum Breve Conventio- nis pendet*, &c. whereas it was not depending till the Return, which was *Octob. Hill. per Cur'* the Writ of Covenant is pendant when it is purchased. 2. Because the Writ of *Dedimus potest.* was directed *Rogero Manwood Mil.* whereas he was not then Knight, and that was confessed by pleading *in nullo est Erratum. Resp.* This is contrary to the Record, and it cannot be assigned for Error. *Cro. Eliz.* 677. *Cro. Jac.* 11.

Error to reverse a Fine in *Chester*, because the Writ of Covenant bore Teste after the Teste of the *Dedimus potestatem*, and it was held to be a manifest Error, and the Fine was reversed. *Cro. Eliz.* 740.

Error was assigned in the Proclamations, whereupon issued a *Scire facias* to the *Custos Brevium*, who certified the Proclamations, by which Certificate it appeared two of the said Proclamations were made in one Day; upon which the Defendant prayed another *Scire fa-*

cias to the Chirographer, in whose Office it appeared, that all the Proclamations were well and duly made, it was awarded that a new *Certiorari* be awarded to the Chirographer, who certified the Proclamations to be well and duly made; and thereupon the Court awarded, that the Proclamations in the Office of the *Custos Brev.* should be amended, according to the Proclamations in the Office of the Chirographer, for the Chirographer makes the Proclamations, and he is the chief Officer as to them, and the *Custos Brevium* has but the Abstract of the Proclamations. In this Case, before the Writ brought, a Stranger had brought a Writ of Error against the same Defendant, upon the same Fine, upon which the Transcript of the Fine and Proclamations are removed *in Banco*, and after the Plaintiff is Nonsuit. Now another, who hath Cause, may have a Writ of Error *Quod coram vobis residet.*
 3 *Leon.* 106. *Rag and Bowl's Case.*

Errors assigned in the Earl of *Bedford* and
Forster's Case.

1st, The Writ was *Inter Nicholaum Forster quer'*, and so was the *Dedimus*; but in the Caption of the Fine annexed to the *Dedimus*, which was certified, *Præcipe John Foster, sen'*. *Per Cur'* it is all one in Sound.

2^d, The Writ of Covenant was *de 8 Messuagiis, 2 Toftis, &c.* and so the *Dedimus*, and the Fine certified was *Præcipe, &c. de 8 Messuag. 2 Messuag. &c. 2 Messuag. pro 2 Toftis*; it is not material, for the Concord hath Relation to the Writ of Covenant and the *Dedimus potest.* and the Entry of the *Præcipe* upon the Teste
 of

of the Concord, is more than need to be. *Cro. Jac. 77.*

On a Writ of Error to reverse a Fine, Recovery pleaded.

IN a Writ of Error by Remainder Man in Tail to reverse a Fine, the Defendant pleads, in Bar of the Writ of Error, a common Recovery by Tenant in Tail of the Land; the Plaintiff replies, that at the Time of the Recovery suffer'd, that he himself was Tenant to the *Præcipe* of the Land comprised within the Recovery, at the Time of the Recovery, and so the Recovery is void, upon which they are at Issue; and it is found by Verdict, that he was Tenant of Part of the Land, and of Part not: This Issue is found partly for the Plaintiff, and partly for the Defendant; so that the Court shall go to the Examination of the Error, for that whereof he is found not Tenant to the *Præcipe*, but it shall be a good Bar of the Writ of Error, for that whereof he is found Tenant to the *Præcipe*. *2 Roll's Abridgm. 711. Done and Smethburst.*

A Writ of Error to reverse a Fine was brought by the Plaintiff, a Cousin and Heir to the Earl of Devon, and assigns Error, and brings *Scire fac. ad audiend. Errores*, and doth not shew in either of the said Writs how he was Cousin to the said Earl; and for this Cause, the Defendant pleaded in Abatement of the Writ.

Per Cur': It is good enough, without shewing how in the Writ of Error, or the *Scire fac.* for the one is but a Commission to hear the Errors,

and needs not such Certainty, and the other is but a Writ founded thereon; nor is it requisite that the Title be shew'd therein, unless it be in a special Case, varying from the common Course, as where a special Heir in Tail brings a Writ of Error; or he in Remainder, because he is to entitle himself, he ought to shew specially how Cousin, or how he hath the Remainder; otherwise not. *Cro. Jac.* 160, 161. *Sir Rich. Chambernoon* against *William Godolphin*.

A Fine may be reversed as to one, and stand good as to another. 1 *Leon.* 114. *Charnock* and *Worsely*, 3 *Mod.* 140.

By the *Stat. of 5 H. 4. cap. 14.* all the Parts of the Fine shall be enrolled with the chief Clerk of the Bench, (which is the *Custos Brevium*) before that the Chirographer had them out of Court, and the Use is to direct a Writ of Error to the Chief Justice of the Bench, and another to the *Custos Brevium*, to certify *Transcriptum pedis finis*, and another to the Chirographer, to certify *Transcriptum notæ finis*; and these Words are added in the Writ to the *Custos Brevium*, *Cum omnibus eundem finem tangentibus*, by Force of which Words he certifies the original Writ. 5 *Rep.* 39. *b. Tey's Case.*

The Conusor shall not assign Error in the Grant and Render, by which he himself takes the Estate, no more than the Conusee shall do in the Conufance; for this is to defeat the Estate, which by the Fine is given to himself; neither shall the Recoveror bring a Writ of Error to defeat the Record in which he himself recovers; for the Judgment in a Writ of Error is to be restored to all that he hath lost by the Fine and Judgment, and not to avoid or lose that which he

he had gained by the Fine or Judgment. A Man shall not reverse Judgment for Error, if he cannot shew that the Error is in his Disadvantage. 5 Rep. 39. *Tey's Case*.

Cases of Amendments of Fines hanging a Writ of Error. 5 Rep. 44. *a. b. Bobun's Case*. Vide *Gay's Case* 45.

Fines reversed for Nonage, *vide* Infant.

Error upon a Fine and Proclamations, the Proclamations shall be certified. Com. 267. *a. Fisher's Case*.

Error lies not upon a Fine or common Recovery for false *Latin*, Rasure, Interlining, Misentry of the Warrant of Attorney, Proclamation mis-returned, or not Return of the Sheriff, or Default of Form in Words. Stat. 23 Eliz. cap. 5. And by the Stat. 27 Eliz. cap. 19. this extends to Fines and Recoveries in *Wales*.

Caption before the Teste of the *Dedimus*, no Error. Nov. liber Entr. 255.

R. M. Tenant in Tail had Issue two Sons, R. and J. he died seised, and R. his Son and Heir levied a Fine thereof, and afterwards levied another Fine, and died *sans* Issue: J. brought two several Writs of Error to reverse both the Fines; and the Tenant, to the Writ of Error brought upon the first Fine, pleaded the second Fine in Bar of it; and in Bar of a Writ of Error brought upon the second Fine he pleaded the first Fine; and the Court advised him to plead, that the Fine pleaded in Bar was erroneous. 2 Leon. 211. *Moulton's Case*.

If a *Dedimus potestatem* be awarded to two, and one of them takes the Conufance of the Fine, and this Fine is afterwards drawn up in C. B. yet the Party may well have Error on

this Fine, (*viz.*) that the Conufance was without Warrant; for it is not contrary to the Record, for the *Dedimus potestatem* is Parcel of the Record, and the Assignment of the Error agrees with it; but if fuch erroneous Conufance, upon *Dedimus potestatem*. and the Fine is afterwards drawn up as a Fine in Court, now no Mifpriefion of the *Dedimus* fhall avoid this, for it fhall be adjudged as a Fine acknowledged in Court only. *Telv.* 34.

Error to reverse a Fine in the County of *Montgomery* by the Plaintiff, and *Richard Herbert*: The first Error, for that the Writ of *Dedimus* bore Teste before the Writ of Covenant, and had a *Scire facias* to warn the Heir and Ter-Tenant, and *T. B.* was returned to be warned as Heir and Ter-Tenant, and he appeared and pleaded, That *William Binion*, the Conufee, his Father, died feifed, which descended to him as his Heir, and that he is Ter-Tenant within Age, and prays *que parol Demur.* The Plaintiff counterpleaded the Age, fhewing that she was intituled to have Dower before the Fine was levied, and now is barred of her Dower by this Fine, wherefore she fues to be restored, to have her Writ of Dower; and it was thereupon demurred; and *per Cur'*, it is no Plea to oust him of his Age, *præter Dodderidge.* For it is a Rule, that the Heir being within Age, and in by Descent, (fo as he is Heir and Ter-Tenant) fhall have his Age in a Writ of Error. *Cro. Jac.* 392. *Barborn Herbert* against *Thomas Binion.*

Where

*Where a Fine may be avoided,
and how.*

AS to erroneous Fines, observe, that no Person can bring a Writ of Error to reverse a Fine, or any Judgment, that is not entitled to the Land of which the Fine was levied. 1 *Roll's Abridgm.* Dyer 90. 3 *Lev.* 36. For the Courts of Law will not turn out the present Tenant, unless the Demandant can make out a clear Title, Possession always carrying with it the Presumption of a good Title, till the Owner's Right appears: Besides, where the Plaintiff in a Writ of Error cannot make out a Title, he can receive no Damage by the Fine, which by the Writ of Error is always to be done, though it should be erroneous; so it is but trifling with the Courts of Justice to seek Relief, when he cannot make it appear he has received any Injury.

And if there be several Parties to an erroneous Fine, they shall all join with the Party that is to enjoy the Land, though they themselves can have nothing. 1 *Roll. Abr.* 747. Dyer 89.

And further, nothing can be assigned for Error that contradicts the Record. 1 *Roll's Abridgm.* 757.

No Man can have a Writ of Error to reverse a Fine that took an Estate by it. 2 *Vent.* 30. 1 *Mod.* 246.

If a Fine be levied, but the Proclamations are not duly and rightly made, the Writ of Error shall only reverse the Proclamations; for where the Proclamations, or not all of them, are
not

not duly made, 'tis altogether the same as if they never had been made; then the Fine remains good at Common Law to work a Discontinuance. *Hugh. Abr.* 938. *Dyer* 182, 216.

Fines may be avoided for Fraud, Covin, or Deceit, though there be no Error in the Process; and that may be done either by Writ of Deceit or Averment, setting forth the Fraud or Covin. Thus if a Fine be levied of Land in Ancient Demesne, the Lord shall have a Writ of Deceit against the Conusor and the Tenant, and by that avoid the Fine. *F. N. B.* 98. *a. Moor* 6. And the Reason why Fines of Ancient Demesne must be levied in the Lord's Court, is, because those Lands were not originally within the Jurisdiction of the Courts of *Westminster*; and this Privilege the Tenants enjoy, not to be called from the Business of the Plough by any foreign Litigation. *4 Ed. 3. c. 4. Kel.* 43. *1 Leon.* 290. *1 Salk.* 339.

Also, if Fines are to secret Uses to deceive the Purchaser. *3 Co.* 80. *Plowd.* 49. *a. b.*

So if a Fine be levied on an usurious Contract. *3 Co.* 80.

If either of the Parties Conusors die after the Conufance or Concord, and before the King's Silver be entered, this will avoid the Fine, and it cannot be made good: But if the King's Silver be enter'd on Paper, or upon the Back of the Writ of Covenant, (as the Use is) and the Party die after this, the Fine by this shall not be avoided, but may be finished. See *Cro. Eliz.* 469. *Dyer* 220, 246, 320. *5 Co.* 39. *Co. Litt.* 9. *Co. 3 Inst.* 511. *Dyer* 89. *Hob.* 330, 403, 404.

Where

Where the Conusor dies after the Conusance made, the Writ of Covenant and *Dedimus potest* being antedated, and the King's Silver paid, the Fine will be a good Fine. *Jenk. 4 Cent. Ca. 28. 7 Co. 3.*

It is held also, that if a Judge take the Conusance of a Fine, and before it be certified the King demise, and the Judge have Notice of this, the Fine now cannot be certified, for his Patent is at an End; and there seems to be the same Reason for Commissioners to take a Conusance by *Dedimus potest*. *Jenk. 4 Cent. Ca. 28.* But see *1 Ann. cap. 8.*

As a fraudulent Deed or Conveyance may be avoided for Fraud, so a Fine may be avoided.

If a Fine be gotten or obtained by any notorious Fraud or Practice, it may, in some Cases, be avoided by a *Vacat.* See *Cro. Eliz. 471, 518, 531. Mo. Ca. 21. Plowd. 370.*

If a Lessee for Life, or Years, or a Copyholder, levy a Fine of Covin, of Purpose to bar him in Reversion, or the Lord of his Inheritance, this may be avoided for Fraud. *3 Co. 78. 8 Co. 105.*

If there be Tenant for Life, the Remainder for Life, the Remainder in Fee, and the first Tenant for Life alien, and the Alienee levy a Fine with Proclamations, and the second Tenant for Life claim, &c. this doth make void the Fine, not only against him, but against him in Remainder also.

Also it seems the same Law is of a Fine levied in Pursuit of an usurious Contract, as by Fraud. *3 Co. 18, 20, 45. 16 H. 7. cap. 5. Jenk. 6 Cent. Ca. 45. Stat. 13 & 27 El. Style 288.*

A Fine levied to deceive a Purchaser or Creditor, may be void or voidable. See *3 Co. 79.*

But

But if one shall pretend Title to Land, and enter and disseise the Tenant, and after levy a Fine, with Intent to bar the Disseisee, this is good. And if the Disseisee shall not enter or claim within the five Years, he is barred. 3 Co. 79.

A Fine levied by one of the same Name of the other's Lands, may be avoided by Deceit, or pleading 34 H. 6. *cap.* 19.

It is a Rule, that any one that hath an Estate in Possession, or Reversion, which will be barred by the Fine when it is levied, may make a Claim or Entry, to prevent the Bar of the Fine.

And by Authority also any other Man may make a Claim, Entry, &c. in this Case, for him that hath Right. See *Mo.* 457.

Of Attornment.

A *Attornment*, from turning from one to another, 1 *Inst.* 303. is the Agreement of the Tenant to the Grant of a Seignior, Rent, or of the Donee in Tail, or Tenant for Life, or Years, to the Grant of the Remainder or Reversion; by this the Tenant acknowledgeth his new Landlord; otherwise he that buyeth any Lands or Tenements of a third Person cannot get the Possession. 1 *Inst.* 309. *b.* It is not necessary on a Fine, because the Estate is transferred to the Use, by the 27 *H.* 8. *cap.* 10. And is never necessary, but where there is a Tenure, Attendance, Reversion or Remainder, or Payment of Rent of the Land. 1 *Inst.* 3. 312. *a.*

The

The End of Attornment is to perfect Grants, and therefore cannot be made upon a Condition, or for a Time.

Attornment is either expressed or imply'd. 1 Litt. 551. Expressed by Words, or Writing; by Words, only by saying, *I attorn to you by Force of the said Grant.* 1 Inst. 309. b. 310. a. &c. Or, *I do acknowledge myself your Tenant*: When it is by Writing, it is endorsed on the Deed, or set down in any other Writing, which is the safest Way; and, in both Cases, the Tenant may moreover deliver to the Grantee a Penny, &c. by Way of Acknowledgment, that the Witnesses may the better remember it.

When it is only imply'd by Law, then it is as if a Reversion be granted to two by Deed, and the Tenant attorns to one of them, according to the Grant; this Acknowledgment is good to vest the Reversion in both the Grantees.

Attornment is so necessary, that before it be done, the Grantee cannot bring an Action, or distrain. See the 32 H. 8. cap. 24. And for the Exposition of it, 1 Inst. 215. a. & b.

The Title of *Attornment* was a very difficult and great Title, with its Appendages, by the Writ of *Quid juris clamat, Quem redditum reddit, Per quæ servitia*; but now Attornments are not so much in use as formerly, for new Expedients are found out by Fines to Uses, Bargain and Sale, Lease and Release, and by Deeds inrolled, according to the Stat. of 27 H. 8. cap. 16. and by the 4 & 5 Ann. cap. 16.

All Grants and Conveyances to be made by Fine, or otherwise, of any Manors, Rents, Reversions or Remainders, shall be good without Attornment of the Tenants, provided that no
Tenant

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Tenant shall be prejudiced by Payment of any Rents, or for Breach of any Condition for Non-payment of Rents, before Notice shall be given him of such Grant by the Conufee or Grantee.

This Act does nor extend to Executions of Judgments in Ejectment, but those remain as before, as to Attornment of Tenants to him that gains the Possession, for it relates only to Grants and Conveyances.

A Fine of a Reversion ought not to be ingrossed until the Tenant for Term of Life attorn, for until Attornment he is dispunishable of Wafte, nor can the Conufee avow upon him for the Rent behind before Attornment. 22 H. 6. fol. 13. Plowd. 431.

The Conufee may compel fuch Tenant for Life to attorn, by the judicial Writ *Quid juris Clamat*, iffuing out of the Record of the Fine, which lieth in the *Custos Brevium's* Hand, and lieth for the Grantee of a Reversion or Remainder to force the particular Tenant to attorn.

Or a *Quem redditum reddit*, a judicial Writ iffuing out of the Note of a Fine againft the Tenant of the Land, to compel him to attorn upon the Grant of Rent-Seck, or Rent-Charge, out of the Land.

Or a *Per quæ Servitia*, a judicial Writ iffuing from the Note of a Fine, and lieth for the Conufor of a Manor, Seigniorie, chief Rent, or other Services, to compel him that is Tenant of the Land at the Time of the Note of the Fine levied, to attorn unto him; and this muft always be fued forth upon the Note of the Fine made by the Chirographer, and before he ingrofles

grosses it, for after it cannot be had. F. N. B.
fol. 47. a. b.

As to the Execution of a Fine.

A Fine is executed either by Writ of *Hab. fac. Seisinam*, which is a Writ to the Sheriff to put the Conusee or his Heirs in Possession; and this must be sued forth within a Year after the Fine sued forth, or after Judgment upon a *Scire facias*: Or else he must have a Writ of *Sci. fac.* which is to be sued forth after a Year and a Day after the Fine is levied; and thereby the Sheriff is to warn the Tenant to appear, and shew Cause, if he can, why the Conusee, or his Heirs, should not have Execution. At the Return whereof, if the Tenant appears, and shews no Cause to the Contrary, the Plaintiff shall have an *Hab. fac. Seisinam* to the Sheriff to put him or his Heirs in Possession. Or the Conusee, where the Fine is *sur Conusance, de Droit come ceo*, &c. may obtain the actual Possession of the Land contained in the Fine by an Entry: For in this Case of a Fine executed, if the Conusor be still in Possession of the Land whereof the Fine is levied, the Conusee may, without any Writ of *Hab. fac. Seisin.* enter upon him, and so get the Seisin and Possession of the Land.

And observe, That if a Fine be levied to Husband and Wife in special Tail, the Remainder to the Heirs of the Body of the Husband, and the Wife dieth without Issue, the Remainder is executed in Possession in the Husband; for the Estate-tail meeteth with the Fee-simple, and

and it is drowned. Q. 41 *Ed.* 3. 14. 14 *Ed.* 3. 5.
7 *H.* 4. 23.

As to the Pleas to a Fine.

FOR Pleas to avoid a Fine, see *Owen's Rep.*
21. *Nelson's Abridgment* 86. Vol. II. *Curf.*
Cancellariæ 286.

How a Fine is to be pleaded. *Leon.* 386, 986.
West's Symb. Part 2. p. 6. *Cro. Eliz.* 903, 917.

The Plea of *per Durefs*, or Imprisonment,
will not, it is said, be admitted. 17 *Ed.* 3. 52.
17 *Aff.* 17.

In pleading of a Fine, it is not said, that
J. S. levied a Fine, but a Certain levied itself,
without alledging of any Seisin. 2 *Inst.* 511.

Pleading of a Fine with Warranty, as an
Estoppel, by Reason of the Warranty. See
1 *Lutw.* 852, 853.

The Plea of *Partes finis nihil habuerunt tem-*
pore levationis finis is given only to Strangers to
the Fine, but Parties and Privies are concluded
to plead it. Where this Plea is good or not,
see *Moor* 251. *Hughes* 940. *Hob.* 333. 1 *Leon.*
82, 83, 84.

The Issue in Tail may not have this Plea, un-
less to avoid a Fine *sur Release* only. 3 *Co.* 141.
Dyer 334.

For Pleas to a Fine, see the several Ways of
pleading a Fine in the Case of *Hudson* against
Benson, 2 *Lev.* 31.

Issue in Tail may aver Continuance of Pos-
session against a Fine *sur Conusance de Droit tan-*
tum, or Surrender. See 12 *Ed.* 4. 12, 15.

11 H. 4. 85. But not against *Conusance des Droit come ceo.*

For Pleas to avoid a Fine, see *Owen's Rep.*

21 E. 27. *Stat. Ed. 1. cap. 1.*

How a Fine is to be pleaded, see 1 *Leon. Case* 386. *West's Symb. 2d Part. Cro. Eliz. 903, 913.*

But in the Plea, if neither of the Parties had any Thing at the Time of levying the Fine in the Estate, then it must be shewn in whom it was vested. See the 27 *Ed. 1.* and the Exposition thereof, 2 *Inst. 521; Etc.* and the 4th of *H. 7. cap. 24.*

In the pleading of a Fine or Recovery to Uses, you need not set forth the Deeds which lead the Uses; but to say, that the Fine or Recovery (as the Case is) was levied or suffered to such Uses; and in Evidence you must produce the Deeds; to prove the Uses. 8 *W. K. B.*

Of the Operation of Fines in barring the Issue in Tail.

BY the 4 of *H. 7. cap. 24.* a Fine with Proclamations shall conclude all Persons, Frivies and Strangers, except Women Covert, Persons under Age, in Prison, out of the Realm, or of *non sane Memory*, being not Parties to the Fine by this general Clause; all others are bound but by the first Saving.

The Right and Interest that any Person or Persons, other than Parties, have or hath at the Time of the Fine ingrossed, is saved; so that such they or their Heirs pursue such their Right and Interest by Action, or lawful Entry, with-

in five Years after the Proclamation; this Clause seems to include only those who have present Right.

But by the second Saving, the Right and Interest of all Persons is saved, which accrues after Ingrossing the Fine; so that the Parties having the same Right pursue it within five Years after such Right shall so accrue to them; and if at the Time of the Fine ingrossed, or of such accruing Right and Interest, the Persons be covert, and no Parties to the Fine, under Age, in Prison, out of the Realm, or of *non sane Memory*, they or their Heirs have Time to pursue their Action within five Years after such Imperfection or Disability removed.

All Parties by the Statutes, are either Parties, Privies, or Strangers: It is plain, the Parties are barred as to the Privies, which is the material operative Word in the 4 of H. 7. It is to be observed, that the Word *Privies* admits of, and has a threefold Signification; for it either comprehends a Privy in Estate, as between Donor and Donee, (but see 2 *Inst.* 516.) which arises from their own Contract, or a Relation between Parties arising from Blood only, neither of which are meant by the Word *Privies* in the Act; for it would be unreasonable and absurd, to allow any Man to strip me of my Acquisition or Inheritance, without any Laches or Neglect of mine, because I happen to be his Heir, or because by fair Contract I am concerned in Interest with him, or am his Tenant. See 2 *Inst.* 523. 3 Co. 89. a.

Who here are meant by the *Privies*, are those not only in Blood, but in Estate and Title to the Land of which the Fine was levied; that

is, those must necessarily mention the Conusor, and convey to themselves through him, before they can make out their Title to the Estate. See *Hob.* 333.

If Tenant in Tail is disseised, and the Disseisor levies a Fine, the Disseisee has five Years to make his Claim in by the first Saving; because he is the first that has a Right at the Time of the Fine levied; and if he omits it in that Time, the Issue is bound for ever. 3 Co. 87. *Cro. Eliz.* 896. *Co. Litt.* 372. *Litt.* 90. Bar by Estoppel, by Discontinuance.

PRECEDENTS

Used in the

Several METHODS

OF

Levyng Fines, &c.

*The Form of a Fine sur done Grant
& Render, otherwise called a
Double Fine.*

Middlesex, ff.

COMMAND *E. F.* that he
justly, and without De-
lay perform to *G. H.* the
Covenant made between
them, of the Manor of *E.* with the Appur-
tenants, &c. and unless, &c.

And the Agreement is such, *to wit*, that the
said *E.* hath acknowledged the said Manor
with the Appurtenants, to be the Right of
him the said *G.* as that which the said *G.* hath
of

of the Gift of the said *E.* and that he hath remised and quit-claimed from him the said *E.* and his Heirs, to the said *G.* and his Heirs; and moreover the said *E.* hath granted for himself and his Heirs, that they will warrant to the said *G.* and his Heirs the aforesaid Manor with the Appurtenants, against the said *E.* and his Heirs for ever. And for this Acknowledgment, Remise, Quit-claim, Warranty, Fine and Agreement, the said *G.* hath granted to the said *E.* and his Heirs the Annual Rent of ten Pounds issuing out of the said Manor, with the Appurtenants; and that he hath rendred to him, &c. for him the said *E.* and his Heirs, to have and receive the said Rent at the Feasts of the Annunciation of the Blessed Virgin *Mary* and *St. Michael* the Archangel, at even and equal Portions, to be paid yearly for ever. And if it shall happen that the said Rent of ten Pounds be in Arrear in Part, or in all, after any of the said Feasts whereupon it ought to be paid, that then it shall be lawful for the said *E.* and his Heirs to enter into the said Manor, with the Appurtenants, and distrain, and lawfully to carry and drive away, and retain in his own Possession the Distress there taken and had, until the said Rent of ten Pounds with the Arrears, if any be, shall be fully paid and satisfied, or in Default of such Payment, to dispose of the said Distress so taken according to Law.

The Form of a Fine sur Conuſance de Droit tantum.

Middleſex, ſſ. **C**OMmand *E. F.* and *G.* his Wife, that they juſtly perform to *H. J.* the Covenant made between them, of the third Part of three Meſſuages, three Tofts, three Gardens, 200 Acres of Land, ſixty Acres of Meadow, and 100 Acres of Paſture, with the Appurtenants in *F. G.* and *K.* and unleſs, &c.

And the Agreement is ſuch, (*to wit*) that the ſaid *E.* and *G.* have acknowledged the ſaid third Part, with the Appurtenants, to be the Right of the ſaid *J.* and have granted that the ſaid third Part, with the Appurtenants, (which *J. R.*'s Widow at the Day when this Agreement was made, holds for the Term of her Life) of the Inheritance of the ſaid *G.* and which after the Death of the ſaid *J. R.* ought to revert to *E.* and *G.* immediately after the Death of the ſaid *J. R.* ſhall remain to the ſaid *J.* and his Heirs, for ever, to hold, &c. And moreover the ſaid *E.* and *G.* have granted for themſelves, and the Heirs of the ſaid *G.* that they will warrant to the ſaid *J.* and his Heirs, the third Part, with the Appurtenants, as aforeſaid, againſt them the ſaid *E.* and *G.* and the Heirs of the ſaid *G.* for ever. And for this, &c.

A Leaſe

*A Lease for Years by a Fine fur
Concessit.*

Hants, ff. **C**OMmand *A. B.* That he justly,
Ec. perform to *C. D.* the Cove-
 nant made between them, of two Messuages
 and twenty-six Acres of Land, with the Ap-
 purtenants in *E.* And unless, *Ec.*

And the Agreement is such, *to wit*, That
 the said *A.* hath granted to the said *C.* the
 said Tenements, with the Appurtenants; to
 have and to hold to the said *C.* from the Feast
 of *St. Michael* the Archangel last past, until the
 full End and Term of twenty-one Years, from
 thence next ensuing, fully to be compleated
 and ended; yielding therefore yearly during the
 said whole Term, to the said *A.* and his Heirs, ten
 Pounds of lawful Money of *Great Britain*, to be
 paid at the Feasts of the Ancunciation of the
 Blessed Virgin *Mary* and *St. Michael* the Arch-
 angel, by even and equal Portions. And if it
 shall happen the said Rent to be in Arrear,
 and unpaid in Part, or in all, after any of the
 said Feasts, then it shall be lawful for the said
A. and his Heirs to enter into the said Tene-
 ments, with the Appurtenants, and to distrain
 and to drive and carry away the Distress there
 taken, and detain the same until they shall be
 fully paid and satisfied of the same Rent and
 Arrears. And furthermore the said *A.* and his
 Heirs warrant to the said *C.* the said Tene-

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ments, with the Appurtenants, against the said *A.* and his Heirs during the said whole Term. And for this, &c.

Taken and acknowledged on the eighth Day of November in the eleventh Year of the Reign of his present Majesty George the Second, King of Great Britain, &c. Before me

John Willes.

The Form of a Fine sur Conuſance de Droit come ceo que il ad de ſon Done.

Norfolk, ſſ. Command E. F. That he juſtly, and without Delay, perform to *G. H.* the Covenant made between them of two Meſſuages, three Cottages, and nine Acres of Paſture with the Appurtenants in *ſ.* And unleſs, &c.

And the Agreement is ſuch, (that is to ſay) that the ſaid *E.* hath acknowledged the ſaid Tenements, with the Appurtenants, to be the Right of the ſaid *G.* as that which the ſaid *G.* hath of the Gift of the ſaid *E.* and theſe he hath remiſed and quit-claimed from him and his Heirs to the aforeſaid *E.* and his Heirs, for ever.

And moreover the ſaid *E.* hath granted for himſelf and his Heirs, that they will warrant to the ſaid *G.* the ſaid Tenements, with the Appurtenants, againſt the ſaid *E.* and his Heirs, for ever. And for this, &c.

A Fine

A Fine sur Concessit for ninety-nine Years, if the Wife of the first Conusor live so long.

Shropsh. ff. **C**ommand Sir *A. B.* Kt. &c. his Wife, *D. E.* and *F. G.* Esquires, That they justly, &c. perform to *H. J.* Gent. the Covenant made between them of the Manor of *K. L.* otherwise *M. N.* with the Appurtenants; and of the Burrough of *O. P.* otherwise *Q. R.* and also of 300 Messuages, forty Tofts, and a Rent of nine Pounds ten Shillings, and Common of Pasture for all Manner of Cattle, with the Appurtenants in *O. P.* &c. (naming the Places) and also the Rectory of *S. T.* otherwise *U. W.* with the Appurtenants, and the Advowson of the Church of *X. Y.* otherwise *Z. T.* And unless, &c.

And the Agreement is such, (that is to say) that the said *A. B.* *D. E.* and *F. G.* have granted to the said *H. J.* Gent. the said Manor, Burrough, Tenements, Rent, Common of Pasture, and Rectory, with the Appurtenants and Advowson aforesaid; to have and to hold to the said *H. J.* from the Feast of St. *John* Baptist last past, until the End of ninety-nine Years, from thence next ensuing, and fully to be compleated if the said *C.* shall so long live; yielding and paying therefore to *D. E.* and *F. G.* the yearly Rent of a Pepper-Corn at the Feast of St. *John* Baptist in every Year during the said Term, if required, if the said *C.* shall live so long.

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And the said *A. B. and C.* and the Heirs of the said *A.* warrant to the said *H. J.* the said Manor, &c. (here again naming the Parcels) during the said Term, if the said *C.* shall so long live. And lastly, the said *D. F.* warrant to the said *H. J.* the said Manor, &c. (here again naming the Parcels) during the said Term, if the said *C.* shall so long live. And for this, &c.

Taken and Acknowledged as above.

**A Fine sur Conusance de Droit by
the Husband and Wife to two.**

Suffolk, ss. **C**Ommand *W. C.* and *A.* his Wife, That they justly perform to *R. M.* the Covenant made between them, of the fourth Part of six Messuages, four Tofts, two Gardens, 300 Acres of Land, seventy Acres of Meadow, and eighty of Pasture, with the Appurtenants in *T.* and *M.* and *S.* And unless they shall so do, and the said *R. M.* shall give you Security that he Suit shall be prosecuted, then summon by good Summoners the said *W. C.* and his Wife, that they be before our Justices at *Westminster* in eight Days of *St. Hillary*, to shew wherefore they will not do it; and have there the Summoners and this Writ. *Witness ourselves at Westminster, the fifth Day of November in the eleventh Year of our Reign.*

And the Agreement is such, (*to wit*) that the said *A.* and *B.* have acknowledged the said Tenements, with the Appurtenants, to be the Right

Right of him the said C. as those which the said C. and R. have of the Gift of the aforesaid A. and B. and those they have remised and quit-claimed from the said A. and B. and the Heirs of him the said A. to the said C. and R. and the Heirs of the said C. for ever. And moreover the said A. and B. have granted for themselves, and the Heirs of the said A. that they will warrant to the said C. and R. and the Heirs of the said C. the said Tenement, with the Appurtenants, against the said A. and B. and the Heirs of him the said A. for ever. And for this Acknowledgment, Remise, Quit-claim, Warranty, Fine and Agreement, the same C. and R. have given to the aforesaid A. and B. 240 l. Sterl.

A Fine sur Conufance de Droit come ceo.

Hereford, ff. **C**ommand, &c. As before.

And the Agreement is such, (*to wit*) that they the said *Thomas* and *Jane* have acknowledged the said Tenements, with the Appurtenants, to be the Right of the said A. as those which the said A. hath of the Gift of the said T. P. and *Jane*; and they have remised and quit-claimed the same from them the said T. P. and their Heirs, to the said A. and his Heirs, for ever. And moreover the said T. hath granted for himself and for his Heirs, that they will Warrant to the said A. and his Heirs the said Tenements, with the Appurtenants, against him

him the said *T.* and his Heirs, for ever. And further, the said *T.* and *J.* have granted for themselves, and the Heirs of the said *J.* that they shall warrant to the said *A.* and his Heirs, the said Tenements, with the Appurtenants, against the said *T.* and *J.* and the Heirs of the said *J.* for ever. And for this, &c.

A Fine of divers Honours, Castles, Manors, Parks, several Messuages, Cottages, and a great Variety of Parcels placed in their proper Order.

Norfolk, ss. **C**ommand Sir *A. B.* Kt. and *C.* his Wife, and *D. E.* Esq; Son and Heir apparent to the said *A.* and *C.* his Wife, that they justly, &c. perform to *F. G.* and *H. J.* Gent. the Covenant made between them of the Honours of *K. L.* and *M.* with the Appurtenants; and of the Castles *N. O. P.* with the Appurtenants, moreover of the Park *Q. R. S.* with the Appurtenants; and also of eighty Messuages, fifty Cottages, three Mills, four Dove-houses, 1400 Acres of Land, 500 Acres of Meadow, 1700 Acres of Pasture, 200 Acres of Wood-land, 1500 Acres of Furze and Heath, 200 Acres of Marsh-land, a Rent of thirty Pounds, Common of Pasture, View of Frank-pledge, and whatsoever belongs to the View of Frank-pledge, as Knight's Fees, Wards, Marriages, Escheats, Goods and Chattels, of Waifs, Estrays, Goods and Chattels of Felons, Fugitives, Outlaws, Persons attainted, Felons
of

of themselves, Deodands, Treasure, Fairs, Markets, Wrecks of the Sea, and Free Warren, with the Appurtenants in *T. U.* (mentioning the Towns and Places where the Lands lie) and of a free Fishery in the Waters of *W. X.* and *T.* Moreover of the Advowson of the Church of *Z. &c.* and also of the Moiety of the Manor of *A.* otherwise *B.* with the Appurtenants, Escheats, Goods and Chattels, of Waifs, Estrays, of the Goods and Chattels of Felons, Fugitives, Outlaws, Persons attainted, of the Fairs, Markets, Wrecks of the Sea, and of a free Warren, with the Appurtenants in *C.* otherwise *D.* and of a fourth Part of the Hundred of *E.* with the Appurtenants; and also of the eighth Part of a Barn, with the Appurtenants in *F.* And unless, *&c.*

A Fine acknowledged by F. M. to K. B. of one Messuage, one Barn, five Acres of Land, Meadow and Pasture, and Warranty against all Men.

Suffolk, ss. **C**OMMAND *F. M. Esq;* That justly, *&c.* he hold to *K. B.* the Covenant between them made, of one Messuage, one Barn, thirty-five Acres of Land, five Acres of Meadow, and twelve Acres of Pasture, with the Appurtenants in *E.* And unless, *&c.*

And the Concord is such, (*to wit*) That the aforesaid *F.* hath recognized the Tenements aforesaid, with the Appurtenants, to be the Right of the said *K.* as those which the said *K.* hath by the Gift of the aforesaid *F.* and those

those he hath remised and quit-claimed from himself and his Heirs, for ever. And furthermore the said *F.* hath granted, for himself and his Heirs, that he will warrant the Tenements aforesaid, with the Appurtenants, to the aforesaid *K.* and his Heirs, against all Men, for ever. And for this Recognizance, &c.

A Fine sur Concessit for ninety-nine Years from a Man and his Wife.

Devonsh. ff. **C**OMMAND *C. D.* and *E.* his Wife; That they justly, &c. perform to *F. G. Esq;* the Covenant made between them of the Manor of *H.* with the Appurtenants; and of 300 Acres of Land, 400 Acres of Meadow, and 500 Acres of Pasture, with the Appurtenants in *H.* And unless, &c.

And the Agreement is such, (that is to say) That the said *C.* and *E.* have granted to the said *F.* the said Manor and Tenement, with the Appurtenants; to have and to hold to the said *F.* from the Feast of *St. Michael* the Archangel last past, until the End of the Term of ninety-nine Years, from thence next ensuing, and fully to be compleated and ended, without Impeachment of Waste; yielding therefore yearly to the said *C.* and *E.* and the Heirs of the said *R.* a Pepper-Corn at the Feast of the Nativity of *St. John* Baptist, if demanded; and they the said *C. E.* and the Heirs of the said *E.* warrant to the said *F.* the said Manor and Tenements, with the Appurtenants, as aforesaid, against them the said *C. E.* and the Heirs of

of the said *E.* during the Term aforesaid. And for this, &c. *Taken and acknowledged as above.*

A Fine sur Concessit.

Suffolk, ff. **C**ommand *A. B.* Bart. and *C.* his Wife, That they justly, &c. perform to *D. E.* the Covenant made between them, of the Manors of *F. G. H. J. K. L. M. N. O. P.* otherwise *Q.* otherwise *R. S.* and *T.* with the Appurtenants, and of forty Messuages four Mills, five Gardens, fifty Orchards, 900 Acres of Land, 200 Acres of Meadow, 300 Acres of Pasture, 400 Acres of Wood, 100 Acres of Furze and Heath, and Common of Pasture; with the Appurtenants in *Paddington, Hampstead*, (so naming all the rest of the Places where the Lands lie) and also of the Rectory of *Paddington*, with the Appurtenants. And unless, &c.

And the Agreement is such, (that is to say) That the said *A.* and *C.* have granted to the said *D.* the said Manors, Tenements, Common of Pasture, and Rectory; to have and to hold to the said *D.* from the Feast of the Birth of our Lord *Christ* last past, until the End of the Term of ninety Years, from thence next ensuing, and fully to be compleated and ended, if they the said *A.* and *C.* or either of them shall so long live, without any Impeachment by reason of any Waste; yielding and paying therefore yearly to the said *A.* and *C.* one Grain of Pepper at the Feast of *St. John Baptist*, in every Year during the Continuance of the whole Term aforesaid, if demanded; and if the said *A.* and *C.* or either of them, shall
so

so long live; and the said *A.* and *C.* and the Heirs of the said *A.* the Husband will warrant to the said *D.* the said Manors, Tenements, Common of Pasture, and Rectory with the Appurtenants as aforesaid, during the said whole Term, if the said *A.* and *C.* or either of them shall so long live. And for this, &c.

Taken and acknowledged as above.

A Fine sur Concessit from a Man and his Wife, of a Rent for ninety-nine Years, for the Life of the Wife, with a Clause of Warranty.

London, ff. **C**OMmand *Peter Williams* and *Anne* his Wife, That they justly, &c. perform to *Samuel Roberts* Esq; the Covenant made between them, of an Annual Rent of three Pounds six Shillings, issuing out of four Messuages, with the Appurtenants, in the Parish of *St. John the Evangelist*. And unless, &c.

And the Agreement is such, (that is to say) That they the said *Peter* and *Anne* have granted to the said *Samuel* the said Rent, to have and receive the same to the said *Samuel*, from the Feast of *St. Michael* the Archangel last past, until the End of the Term of ninety-nine Years, from thence next ensuing, and fully to be compleat and ended, if the said *Anne* shall so long live. And the said *Peter* and *Anne* warrant to the said *Samuel* the Rent, as aforesaid, against the said *Peter* and *Anne*, during the whole Term aforesaid, if the said *Anne* shall so long live. And for this, &c. *Taken and acknowledged as above.*

FII

A Fine

MUSEUM
BRITANNICVM

*A Fine sur Conuſance de Droit
from one to two.*

AND the Agreement is ſuch (that is to ſay) That the ſaid *A.* hath acknowledged the ſaid Tenements and Common of Paſture, with the Appurtenants, to be the Right of the ſaid *Henry*, as thoſe which the ſaid *Henry* and *Robert* have of the Gift of the ſaid *A.* and thoſe he hath releaſed and quit-claimed from him and his Heirs to the ſaid *H.* and *R.* and the Heirs of the ſaid *H.* for ever. Moreover the ſaid *A.* hath granted for himſelf and his Heirs, and they will warrant to the ſaid *H.* and *R.* and the Heirs of the ſaid *H.* the ſaid Tenements and Common of Paſture, with the Appurtenants, againſt the ſaid *A.* and his Heirs, for ever. And for this, &c.

A Writ of Covenant of Common.

Command, &c. of three Meſſuages, &c. with the Appurtenants, &c. in *D.* and *T.* of a Common of Paſture for 400 Sheep, with the Appurtenants in *D.* in the Pariſh of *C.* And unleſs, &c.

Of Land and Sheep-Walk.

Command, &c. of one Meſſuage, one Cottage, one Garden, &c. and a Rent of five Pounds, with the Appurtenants in *E.* alſo
N of

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of the Liberty, Foldage, and of a Sheep-
Walk, with the Appurtenants in *E.* And un-
less, &c.

Of Wood Foldage.

Command, &c. of one hundred Acres of
Wood, and the Liberty of Foldage for
fifty Sheep, with the Appurtenants in it and *F.*
And unless, &c.

Of Wood.

Command, &c. of three Roods of Wood,
&c. in the Parishes of *R.* and *E.* &c.

*Of two Parts in three to be di-
vided.*

Command, &c. of two Parts in three to be
divided, of eight Acres of Land, forty
Acres of Pasture, fifty of Fresh and Moorish
Land, with the Appurtenants in *B.* &c. And
unless, &c.

*Of a Parsonage impropriate, and of
the Moiety of the Tithes.*

Command, &c. of the Rectory impropriate
of *K.* with the Appurtenants, and of the
Moiety of all the Tithes of Corn, Grain, and
Hay,

Hay, arising, growing, or renewing in *K.* as
foresaid, to the said Rectory belonging, &c.
And unless, &c.

*Of a Manor Rent-free, Foldage
for Sheep, and a Hundred.*

COMMAND, &c. of the Hundred of, &c.
the Manor of, &c. and a Rent of ten
Shillings, and of a free Foldage, with the Ap-
purtenants in *B.* And unless, &c.

Shropsh. ff. **F***Rancis Wealthy* Esq; personally
demandeth against *George Sel-*
worthy four Messuages, six Gardens, sixty Acres
of Lands, eight Acres of Meadow, sixteen
Acres of Pasture, twenty Acres of Furze and
Heath, and Common of Pasture for all Man-
ner of Cattle, and Common of *Turbary*, with
the Appurtenants in *F.* as his Right and In-
heritance; and into which the said *Hugh* hath
not an Entry, but after a Disseisin, which *Hugh*
Hunt thereof unjustly, and without any Judg-
ment made, to the said *Francis* within thirty
Years, &c. and whereupon he declares that he
was seised of the said Tenements and Com-
mons, with the Appurtenants, in his Demesne
as of Fee and Right, in Time of Peace, in the
Time of our Sovereign Lord the King that
now is, by taking the Profits thereof, to the
Value, &c. and wherein, &c. And thereof
he bringeth his Suit.

And the said *George* personally cometh and defendeth his Right, when, &c. and thereupon voucheth to Warranty *Joseph Venderland*, who is personally present here in Court, and freely warranteth the said Tenements and Commons, with the Appurtenants, to him, &c. And hereupon the said *Francis* demandeth against the said *Joseph*, Tenant by his Warranty, the said Tenements and Commons, with the Appurtenants, in the Manner aforesaid, &c. and hereupon he declares that he was seised of the said Tenements and Commons, with the Appurtenants in his Demesne as of a Fee and Right, in Time of Peace, in the Time of our Sovereign Lord the King that now is, by taking the Profits thereof, to the Value, &c. and wherein, &c. And whereof he bringeth his Suit, &c.

And the said *Joseph*, Tenant by his Warranty, personally cometh and defendeth his Right, when, &c. and thereupon further voucheth to Warranty *Jacob Morland*, who is personally present here in Court, and freely warranteth the said Tenements, with the Appurtenants, &c. And hereupon the said *Francis* demandeth against the said *Jacob*, Tenant by his Warranty, the said Tenements and Commons, with the Appurtenants, in the Manner aforesaid, &c. and whereupon he declares that he was seised of the said Tenements and Commons, with the Appurtenants, in his Demesne as of a Fee and Right, in Time of Peace, in the Reign of our Sovereign Lord the King that now is, by taking the Profits there-
of

of to the Value, &c. and wherein, &c. And therefore he bringeth his Suit, &c.

And the said *Jacob*, Tenant by his Warranty, defendeth his Right when, &c. and pleadeth, that the said *Hugh* did not disseise the said *Francis* of the said Tenements, with the Appurtenants, as the said *Francis* doth by his said Writ and Declaration above suppose. And of this he putteth himself upon the Country, &c.

And the said *Francis* thereupon craveth Leave to imparl, and he hath it, &c. and afterwards, in this very Term, the said *Francis* personally cometh again here into Court, and the said *Jacob*, tho' solemnly summoned, cometh not, but departeth in Contempt of the Court, and maketh Default; therefore it is adjudged that the said *Francis* do recover his Seisin of the said Tenements and Commons, with the Appurtenants, against the said *George*; and that the said *George* do have of the Land of the said *Joseph* to the Value, &c. and that the said *Joseph* do have over of the Land of the said *Jacob* to the Value of, &c. and be the said *Jacob* amerced, &c. And hereupon the said *Francis* prays a Writ of our Sovereign Lord the King, to be directed to the Sheriff of the said County, to cause full Seisin of the said Tenements and Commons, with the Appurtenants, to be delivered to him: And the same is granted to him, returnable here forthwith; afterwards, that is to say, on the seventh Day of May this very Term, the said *Francis* personally comes here into this Court, and the Sheriff, (namely *Robert Tench* Esq;) now returneth, that he, by Virtue of the said Writ

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to him directed, did, on the fifth Day of the same Month of *May*, cause full Seisin of the said Tenements and Commons, with the Appurtenances, to be delivered to the said *Francis*, as by the said Writ he was commanded, &c.

Form of a Fine in a Court of Ancient Demesne.

The Manor of Al- } **T**HE Court of *Rob. A.*
ton Westbrook. } Esq; and *B.* his Wife,
held there on *Thursday* the 9th Day of *June* in
the 10th Year of the Reign of our Sovereign Lord
George the Second, by the Grace of God of *Great*
Britain, France and Ireland King, Defender of the
Faith, and so forth, before *R. A.* and *K. T.*
Suitors of the same Court, according to the
Custom of the same Court, from Time where-
of there is no Memory of Man to the Contrary
existing.

To this Court came *K. N.* in his own proper
Person, and brought into this Court the King's
Writ of *Right Close* against *G. H.* and *P.* his
Wife, to the Bailiff of *Rob. A.* Esq; and *B.*
his Wife, of his Manor of *Alton Westbrook*, di-
rected in Form of Law, according to the Cu-
stom of the Manor aforesaid, to be executed
and determined; which Writ was in the Words
following: *George*, &c. (Here recite the whole
Writ of *Right Close*.) Upon which the afore-
said *J. M.* according to the Custom of the Ma-
nor aforesaid, made Protestation to prosecute
his

his said Writ against the aforesaid *J. F.* and *S.* his Wife, in Form and Nature of the King's Writ of Covenant at Common Law; to the End, that the aforesaid *J. F.* and *S.* his Wife perform the Covenant to the said *J. M.* between them made of the several Tenements aforesaid, in the aforesaid Writ set forth, specified, and demanded by them the said *J. F.* and *S.* his Wife, held in *Alton Westbrook* aforesaid, and found Pledges to prosecute his said Writ; to wit, *L. M.* and *N. O.* Upon which the aforesaid *J. F.* and *S.* his Wife, were solemnly called, and appeared; and upon this the said *J. F.* and *S.* his Wife, prayed Licence to agree with the aforesaid *J. M.* his Suit aforesaid, and gave to the Lord for such Licence three Shillings and four Pence.

And the Agreement is such, to wit, That the said *J. F.* and *S.* his Wife have acknowledged the said Tenements, with the Appurtenances, to be the Right of him the said *J. M.* as those which the said *J. M.* hath of the Gift of the said *J. F.* and *S.* his Wife, and those they have remised and quit-claimed from them the said *J. F.* and *S.* his Wife, and the Heirs of the said *J. F.* to the said *J. M.* and his Heirs for ever; and moreover the said *J. F.* and *S.* his Wife have granted for themselves and the Heirs of the said *J. F.* that they will warrant to the said *J. M.* and his Heirs, the said Tenements, with the Appurtenances, against the said *J. F.* and *S.* his Wife, and the Heirs of the said *J. F.* for ever; and for this Acknowledgment, Quitting Claim, Warranty, Fine, and Concord, (End and Agreement) the said *J. M.* gave to the said

J. F. and **S.** his Wife, twenty Marks *Sterling*,
&c.

Examined by C. D. Steward there.

Attornment.

M*Emorandum*, That the within named *E. F.* Lessee of all and every the Messuage and Lands within mention'd, having heard this present Indenture read, and taken perfect Notice and Knowledge thereof, and of all the Contents thereof, doth consent and agree thereunto, and doth attorn Tenant to the within named *C. D.* for the said Messuage, Lands, and Premises, the 20th Day of, &c. *Anno Dom. 1736*, in the Presence of those whose Names are hereunto subscribed.

M*Emorandum*, That the within named *E. F.* Lessee of all and every the Messuage and Lands within mentioned, after the Sealing and Delivery of these Presents, and perfect Notice thereof taken by him, and of the Contents thereof, did the Day of, &c. in the Year within mentioned, attorn unto the within named *C. D.* upon the said Grant, according to the Form and Effect thereof, by the Payment of Two-pence of lawful Money of *England*, in the Name of Attornment, in the Presence of, &c.

M*Emorandum*, That *G. H.* of, &c. Gent. and the Rest of the Tenants and Farmers of the within mentioned Premises, by Virtue of several Leases made unto them by the within named *A. B.* having all of them had perfect Notice

Notice of this Grant, did severally attorn and become Tenants of and for their severall and respective Interests in the Premisses to the within named *C. D.* this present tenth Day of, &c. in the Year within written; and the said Tenants have every of them given unto the said *C. D.* one Penny in the Name of Attornment, in the Presence of, &c.

THIS *Indenture* made the, &c. between *A. B.* of the one Part, and *C. D.* of the other Part: Whereas the said *A. B.* is seised in his Demesne as of Freehold, for and during the Term of his natural Life, of and in, &c. by Virtue of a Lease to him thereof made by *J. K.* of, &c. Esq; by his *Indenture* bearing Date the, &c. And whereas the said *J. K.* by his Deed indented, bearing Date the, &c. hath granted the said Messuage, Land, and Premisses, with the Appurtenances, and the Reversion thereof to the said *C. D.* as in and by the said *Indentures* more at large appeareth. *Now this Indenture witnesseth*, That the said *A. B.* for divers good reasonable Causes and Considerations him hereunto moving, hath consented, agreed, attorned, and become Tenant, and by these Presents doth consent, agree, attorn, and become Tenant to the said *C. D.* and to the said Grant to him made of the said Messuage, Lands and Premisses, and the Reversion thereof, and in the Name of Attornment and Seisin of the Rent reserved upon the said Lease thereof, hath at and before the making of these Presents, paid to the said *C. D.* one Half Year's Rent due for the said Messuage, Lands, and Premisses at our *Lady Day* last; which the said *C. D.* hath
accepted

accepted of and from the said *A. B.* as from his Tenant, and in Name of Seisin thereof, and Attornment to the said Grant to him thereof made, as aforesaid, accordingly. *In Witness whereof*, the Parties above-named, &c.

Indorsement of an Attornment.

M*Emorandum*, That the within named *F. W.* being Tenant for Term of Life of the said Manor of *M.* and other the Lands expressed in this Indenture, did the first Day of *June 1655*, attorn to the within named *F. R.* according to the Effect of the Grant mention'd in the said Indenture; and for Proof thereof, did give unto the said *F.* in the Name of Attornment, the Sum of four Pence of usual *English* Money, in the Presence of these Persons whose Names are subscribed. *E. F. G. H. &c.* Or thus: *By divers Tenants.*

M*Emorandum*, That the Persons, whose Names are subscribed, the first Day of, &c. did attorn and become Tenants unto the within named *E. B.* and *M.* his Wife, according to the Purport of the Lease within mentioned; and for Proof thereof, every one of them did give unto the said *E.* one Penny, in the Name of Attornment,

Form of an Exemplification.

GEORGE the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To all to whom these our present Letters shall come Greeting. Know ye, that among the Pleas of Land inrolled at *Westminster*, before Sir *John Willes* Knt. and his Brethren, our Justices of the Bench of the Term of *St. Hillary*, in the tenth Year of our Reign, in the thirtieth Roll it is thus contained: Heretofore, as it appears in the seventieth Roll of the Term of *St. Michael* last past, it is thus contained. *Yorkshire. E. F. and G. H. personally demand against A. B. and C. D. the Manor, &c.* (Going on here with the Entry you had made upon the Roll, and after the Words as he was commanded by the said Writ.) You conclude your Exemplification thus: All and singular which Premisses, at the Request of the said *E. and G.* by the Tenor of these Presents, we have commanded to be exemplified; in Testimony whereof, we have caused our Seal, appointed for sealing of Writs in the said Bench, to be affixed to these Presents. Witness *John Willes* at *Westminster*, on the tenth Day of *February* in the tenth Year of our Reign.

*To levy a Fine with Grant and
Render of an Estate.*

THIS *Indenture*, &c. between *A. B.* and *E.* his Wife, on the one Part, and *C. D.* on the other Part, witnesseth, That for divers good Causes and valuable Considerations, it is covenanted, granted, concluded, and agreed by and between the said Parties to these Presents, for themselves, their Heirs, Executors, and Administrators, That before the End of *Hillary* Term now next ensuing, at the Costs and Charges of the said *C. D.* his Executors and Administrators, one Fine with Proclamations, in due Form of Law, shall be acknowledged and levied between the said Parties to these Presents, in Manner and Form following, *viz.* Of three Messuages, with the Appurtenances, in the Parish of, &c. and three other Messuages, &c. in and by which said Fine the said *C. D.* shall remise, release, and quit-claim from him the said *C. D.* and his Heirs, unto the said *A. B.* and *E.* his Wife, and the Heirs of the said *A. B.* all his Right, Title, Estate, and Interest of, in and to the aforesaid Messuages, and other the Premises, with the Appurtenances; for which Remise, Release, and Quit-claim, the said *A. B.* and *E.* his Wife, shall by the said Fine render the said Messuages and Premises, with the Appurtenances, unto the said *C. D.* his Executors, Administrators and Assigns; to have and to hold the same unto the said *C. D.* his Executors, Administrators and Assigns, from the Feast of, &c.
next

next ensuing the Date hereof, for, during, and until the full End and Term of one and twenty Years from thence next ensuing, and fully to be compleat and ended: Yielding and paying therefore yearly, and every Year, unto the said *A. B.* and *E.* his Wife, their Heirs, Executors, and Assigns respectively, during the said Term, the yearly Rent or Sum of, &c. of lawful Money of *England*, at the four most usual Feasts in the Year; that is to say, &c. or within 21 Days after either of the said Feasts. (Here may be added usual Covenants in Leases.)

A Deed to levy a Fine in a Court of Ancient Demesne.

THIS *Indenture*, &c. between *A. B.* on the one Part, and *C. D.* of the other Part, &c. Whereas the said *A. B.* is, on the Day of the Date of these Presents, lawfully seised of an Estate of Inheritance to him and the Heirs Males of his Body, and of and in divers Messuages, Lands, Tenements and Hereditaments, within the Liberty of *F.* at *E.* in the County of *H.* herein after in these Presents particularly mentioned. *Now this Indenture witnesseth*, That the said *A. B.* for divers good Causes and Considerations him hereunto especially moving, and for the settling, &c. doth for himself and his Heirs covenant, grant, and agree to and with the said *C. D.* his Heirs, Executors and Administrators, that he the said *A. B.* at his own proper Costs and Charges, shall and will in due Form of Law, before the Feast, &c. next ensuing

suing the Date of these Presents, acknowledge and levy one Fine in the Court of Ancient Demesne, without the said Liberty of *F.* at *E.* according to the Course and common Usage thereof for levying of Fines for Lands and Hereditaments within the said Liberty, unto the said *C. D.* of all those Messuages, Lands, &c. by the Name of four Messuages, six Gardens, forty Acres of Land, &c. in *F.* at *E.* aforesaid, or by such other Name or Names as shall be thought meet, &c.

In Witness, &c.

By Writ of Right Patent in London, to strengthen a Lease where the Land is entail'd.

THIS Indenture Tripartite, &c. made between *B. E.* of, &c. and *F. K.* of, &c. on the one Part, and *M. B. R. W.* of, &c. on the second Part, and *O. S.* of, &c. on the third Part: Whereas the said *B. E.* and *F. K.* by their Indenture of Lease, dated, &c. (reciting the Lease to the End of the Reddend.) as by the said Indenture of Lease made between the said *B. E.* on the one Part, and the said *O. S.* on the other Part, among divers other Covenants therein mentioned, now plainly and at large doth and may appear, it is now fully covenanted, granted, concluded, conditioned, condescended, and agreed between the said Parties to these Presents, in Manner and Form following: That is to say, the aforesaid *B. E.* doth by these Presents surrender to the said *F. K.* his Estate in
the

the Messuage, Tenement, and Premises, upon Condition that the same, within two Months next after the Date hereof, be lawfully assured to the said *B.* for the Term of his Life without Impeachment of Waste, with the Remainder thereof, according to the Tenor hereunder limited; and the said *F. K.* doth covenant, promise, grant for him, his Heirs, Executors, and Administrators, to and with the said *M. B. R. W.* and *O. S.* and every of them, their Heirs, Executors, Administrators, and the Heirs, Executors, and Administrators of every of them, by these Presents, that for the better Assurance of the said *O. S.* his Executors and Assigns of, in and to the said capital Messuages or Tenements, and other the Tenements, Premises to him demised, as is aforesaid, for and during the said Term of fifty Years, the said *F. H.* shall permit and suffer the said *M. B.* and *R. W.* to pursue and bring the King's Writ of Right Patent out of the King's Majesty's Court of Chancery, against the said *F. H.* to be directed to the Mayor and Sheriffs of the City of *London*; upon which Writ of Right Patent, according to the Custom of the said City of *London*, for passing of common Recoveries with Voucher, the said *M. B.* and *R. W.* shall demand against the said *F.* the capital Messuage and Tenement, and other the Premises, by the Name of, &c. with the Appurtenances, situate, &c. unto which Writ the said *F.* himself, or by his sufficient Attorney, shall appear; and upon Defence shall vouch over to Warranty the common Vouchee, whereupon a Recovery, Judgment, and Execution May be had, according to the Course and Order of common Recoveries with Voucher used

used within the said City: And it is by these Presents covenanted, granted, expressed, condescended, declared, and agreed between all and every the said Parties, that they the said *M. B.* and *R. W.* and their Heirs, from and immediately after Judgment and Execution in Form aforesaid had, shall stand and be seised of all the said Messuage, with the Appurtenances, and every Part thereof; and also the said Recovery hereof shall be to the several Uses, Intents, and Purposes hereafter in these Presents mentioned, and to none other Use or Intent; (that is to say) to the Use of the said *B. E.* during his natural Life, without Impeachment of any manner of Waste; and after his Decease to the Use of the said *F. H.* and of the Heirs Male of his Body lawfully begotten; and for Default of such Issue, to the Use of *P. L.* Citizen and Mercer of *London*, and of the Heirs Male of his Body lawfully begotten; and for Default of such Issue, to the Use of *K. G.* of, &c. and of the Heirs of the said *K. G.* lawfully begotten; and for Default of such Issue, to the Use of the right Heirs of the said *F. H.* for ever, and to none other Use, Intent, or Purpose whatsoever.

In Witness, &c.

*A Lease and Release, to make one
Tenant to the Præcipe in a Re-
covery, and to lead the Use thereof.*

A Lease for a Year, by Way of Bargain
and Sale, according to the *Stat.*

THIS *Indenture* made, &c. between C. D.
of, &c. of one Part, and E. F. of, &c.
the other Part, witnesseth, That the said C. D.
for and in Consideration of the Sum of five
Shillings of lawful Money of *Great Britain* to
him in Hand paid by the said E. F. at or be-
fore the Ensealing and Delivery of these Pre-
sents, the Receipt whereof is hereby acknow-
ledged, hath bargain'd and sold, and doth by
these Presents bargain and sell unto the said
E. F. all, &c. to have and to hold, &c. with the
Appurtenances hereby bargain'd or sold, or men-
tion'd, or intended to be hereby bargain'd and
sold unto the said E. F. his Executors, Admini-
strators and Assigns, from the Day next before
the Day of the Date of these Presents, for, du-
ring, and unto the full End and Term of one
whole Year from thence next ensuing, and fully
to be compleat and ended, to the Intent and
Purpose, that the said E. F. may be the better
enabled to receive and take a Grant or Release
of the Premisses hereby bargain'd and sold, or
mention'd, or intended to be bargain'd and sold
to him and his Assigns hereby, for and during
the natural Life of the said C. D. in such Man-
ner and Form as in and by one Indenture, in-
O tended

tended to bear Date the Day next after the Day of the Date hereof, the same shall be dated, released, and convey'd.

In Witness, &c.

The Release.

THIS *Indenture* made, &c. between C. D. of the first Part, E. F. of the second Part, and G. H. of the third Part, witnesseth, That the said C. D. for and in Consideration of the Sum of, &c. of lawful Money of *England*, to him in Hand paid by the said E. F. at or before the Enfealing and Delivery of these Presents; the Receipt whereof is hereby acknowledged, hath given, granted, released, and confirmed, and by these Presents doth give, grant, lease, and confirm unto the said E. F. all, &c. late in the Tenure or Occupation of the said C. D. (but now all being in the actual Possession of the said E. F. by Force of an Indenture of Bargain and Sale made thereof, bearing Date the Day before the Date of these Presents, and of the Statute for transferring Uses into Possessions;) *To have and to hold* all and singular the said, &c. and all and every the Premises, with the Appurtenances hereby given, granted, released, and confirmed, or mentioned, or intended to be hereby given, granted, released, and confirmed unto the said E. F. and his Assigns, for and during the natural Life of the said C. D. to the Intent and Purpose that the said E. F. shall and may be perfect Tenant of the Freehold of all the said Lands and Premises, until one or more good and perfect Recovery

very or Recoveries may be had against him the said *E. F.* of the same Lands and Premises; and it is covenanted, concluded, and agreed by and between the said Parties to these Presents, that it shall and may be lawful to and for the said *G. H.* before the last Day of *Trinity* Term next ensuing the Date of these Presents, to prosecute out of the High Court of Chancery one or more Writ or Writs of Entry *Sar Disseisin en le Poft*, against the said *E. F.* returnable in the Court of Common Pleas at *Westminster*, whereby the said *G. H.* shall and may respectively demand against the said *E. F.* all and singular the aforementioned Premises, with the Appurtenances, by such Name or Names, Quantity or Quantities, Quality or Qualities, Number or Content of Acres as shall be thought fit and requisite; unto which said Writ or Writs the said *E. F.* shall appear in proper Person, and shall vouch to Warranty the said *C. D.* who shall appear *gratis* upon the Voucher, and shall enter into Warranty, and shall vouch over to Warranty the common Vouchee, and the common Vouchee shall appear and imparl, and afterwards make Default; whereby one or more Recovery or Recoveries, Judgment or Judgments may be had or given for the said *G. H.* for Recovery of the said Manor, Lands, Tenements, Hereditaments and Premises, as aforesaid, against the said *E. F.* and for the said *E. F.* to recover over in Value against the said *C. D.* and for the said *C. D.* to recover over in Value against the common Vouchee, according to the Manner and Form of common Recoveries in such Cases used. And it is further covenanted, granted, concluded, agreed, and de-

clared by and between all and every the said Parties to these Presents; and the true Intent and Meaning of the Parties to these Presents is, That from and immediately after the said common Recovery or Recoveries shall be had, prosecuted and suffer'd, as aforesaid, of the said Premises, the said Recovery or Recoveries shall be and enure, and shall be constru'd, esteem'd, and adjudg'd to be and enure, and hereby declared to have been intended to be and enure, that the said G. H. and all and every other Person or Persons, which shall be seised of the Premises, or any Part thereof, by Force or Virtue of the said Recovery or Recoveries, shall stand seised thereof, and every Part and Parcel thereof, with their and every of their Appurtenances, to the only Use and Behoof of the said C. D. his Heirs and Assigns, and to no other Use, Intent, or Purpose whatsoever.

In Witness, &c.

*A Deed to lead the Use of a Fine
sur Concessit.*

THIS *Indenture*, &c. between G. H. of the one Part, and J. K. and L. M. of the other Part, witnesseth, That for divers good Causes and Considerations the said Parties hereunto moving, it is hereby covenanted, granted, concluded, and agreed by and between all and every the said Parties to these Presents, for them and their Heirs; and the said G. H. doth, for him and his Heirs, covenant, promise, and grant to and with the said J. K. and L. M. their Heirs

Heirs and Assigns by these Presents, that he the said *G. H.* shall and will, before the End of *Easter* Term next ensuing the Date of these Presents, acknowledge and levy in due Form of Law, according to the Laws and Statutes of *England*, unto the said *J. K.* and *L. M.* or to the Survivor of them, one or more Fine or Fines *sur Concessit*, whereby the said *G. H.* shall grant to such Conufee or Conufees, or his or their Heirs, for and during all the Term of the natural Life of the said *G. H.* all that the Castle of, &c. by the Name and Names of, &c. or by such other apt and convenient Names, Numbers of Acres and Messuages, Quantities of Land, and other Things, as shall be fit and requisite; which said Fine or Fines so to be had, acknowledged or levied, as aforesaid, shall enure and be, and shall be construed, deemed, adjudged, and taken to enure and be to the Use and Behoof of such Conufee or Conufees, and his or their Heirs, during all the Term of the natural Life of the said *G. H.* ✓

In Witness, &c.

Covenant to levy a Fine at the Grand Sessions in Wales.

THAT they the said *M. Lord W. of K.* and the Lady *E. Marchioness of G.* shall and will, at the next Great and General Sessions, to be held for the County of *M.* acknowledge and levy before the Justices there, one or more Fine or Fines *sur Conufance de Droit come ceo*, &c. to be ingrossed, recorded, and sued forth

with Proclamations according to the Statute in that Case made and provided, and the usual Course of Fines with Proclamations in such Cases used, unto the said *J. S. F. C.* and their Heirs, or the Heirs of one of them, or to the Survivor of them, and his Heirs, of all those the Manors of, &c.

A Deed declaring that Husband and Wife shall levy a Fine sur Conu. fance de Droit come ceo.

THIS Indenture made between *A. B.* of, &c. and *C.* his Wife, of the one Part, and *D. E.* of, &c. of the other Part, Witnesseth, That for divers good Causes and Considerations the said Parties thereunto moving, it is hereby covenanted, concluded and agreed by and between the said Parties to these Presents; and the said *A. B.* for himself, his Heirs Executors and Administrators, and for the said *C.* his Wife, doth covenant and grant to and with the said *D. E.* his Heirs, Executors and Administrators, that he the said *A. B.* and *C.* his Wife shall and will, by the End of *Easter* Term next, acknowledge and levy in due Form of Law, before his Majesty's Justices of the Court of Common Pleas at *Westminster*, one *Fine sur Conu. fance de Droit come ceo*, &c. with Proclamations, according to the Form of the Statute in such Case made and provided to the said *D. E.* and his Heirs, of all that Messuage or Tenement, and Lands, &c. (setting forth the Parcels) by such Name and Names, Qualities,

lities, Quantities, and Number of Acres, as by the said *D. E.* or his Counsel learned in the Law, shall be reasonably devised, advised or required.

In Witness, &c.

Note ; It is a general Maxim, That unless it be declared by Deed to what Use the Fine was levied, such Fine shall be and enure to the Use of the Conusor that levied the same ; and therefore, if you intend to declare the Use of the Fine in the same Deed, then add as follows :

——— And that the said Fine so to be levied shall be and enure, and shall be deemed, construed, and taken to be and enure ; and the said *D. E.* and his Heirs shall, by Virtue thereof, stand and be seised of and in all and singular the said Premisses, with their and every of their Appurtenants, to the several Uses herein after mentioned and declared, in Manner and Form following ; that is to say,——

To levy a Fine sur Done, Grant & Render.

THIS Indenture, made between *A. B.* and *C.* his Wife, of the one Part, and *D. E.* of, &c. of the other Part, witnesseth, That for diverse good Causes, &c. it is covenanted, concluded, granted and agreed, by and between the said Parties to these Presents, for them, their Heirs, Executors and Administrators, that before the End of *Hillary Term* now next

ensuing, at the Cost and Charges of the said *D. E.* his Executors and Administrators, one Fine with Proclamations, in due Form of Law, shall be levied and acknowledged between the said Parties to these Presents, in Manner and Form following; that is to say, of six Messuages, with the Appurtenants, situate, lying and being in *L.* in the County of *F.* in and by which Fine the said *D. E.* shall remise, release, and quit-claim from him the said *D. E.* and his Heirs, unto the said *A. B.* and *C.* his Wife, and the Heirs of the said *A. B.* all his Right, Title, Estate, and Interest of, in and to the aforesaid Messuages, and other the Premises, with all and singular the Appurtenants; for which Remise, Release, and Quit-claim, the said *A. B.* and *C.* his Wife, shall by the said Fine Render the said Messuages and Premises, with the Appurtenants, unto the said *D. E.* his Executors, Administrators and Assigns; to have and to hold the same unto the said *D. E.* his Executors, Administrators and Assigns, from the Feast of, &c. now last past, for and during, and until the full End and Term of twenty-one Years from thence next ensuing, and fully to be compleat and ended; yielding and paying therefore yearly, and every Year, unto the said *A. B.* and *C.* his Wife, their Heirs, Executors, Administrators and Assigns respectively, during the said Term, the yearly Rent or Sum of ten Pounds of lawful Money of *England*, at the two usual Feasts in the Year; that is to say, &c. or within twenty-eight Days after either of the said Feasts, &c. [Here may be added such usual Covenants as are put into Leases.]

A Fine

*A Fine with a Render of a Rent-
Charge or Annuity, with Liberty
to distrain, &c.*

THIS Indenture made, &c. [as in a *Fine
jur Done, Grant & Render*, unto these
Words, *viz.*] for which Remise, Release and
Quit-claim, the said *A. B.* and *C.* his Wife,
shall by the said Fine grant and render unto
the said *D. E.* his Executors, Administrators
and Assigns, one Annuity or yearly Rent of
Fifty Pounds *per Ann.* of good and lawful
Money of *England*, to be issuing and going out
of the aforelaid Manor, Messuages, Lands
and Premisses, with their, and every of their
Appurtenants; to have, hold, receive and en-
joy the said Annuity of fifty Pounds *per Ann.*
and every Part and Parcel thereof, unto the
said *D. E.* his Executors, Administrators and
Assigns, from the Feast-Day of, &c. next en-
suing the Date hereof, unto the full End and
Term of twenty-one Years, from thence next
ensuing, and fully to be compleat and ended
at the Feasts of, &c. by even and equal Por-
tions yearly to be paid during the said Term.
——And if it shall happen the said yearly
Rent of fifty Pounds, or any Part thereof, to
be behind or unpaid in Part or in all, by the
Space of thirty Days after either of the said
Feasts or Days of Payment, being lawfully
demanded; that then, and from thenceforth,
it shall and may be lawful to and for the said
D. E. his Executors, Administrators and As-
signs,

signs, into the said Manors, Messuages, Lands and Premisses, and every Part and Parcel thereof, to enter and distrain, and the Distress and Distresses there to be found and taken, lawfully to lead, bear, drive and carry away, and the same to detain and keep until the said D. E. his Executors, Administrators and Assigns shall be lawfully paid and satisfied the said Annuity or yearly Rent, and all and every the Arrears thereof.

In Witness, &c.

*A Writ of Right, with double
Voucher, to levy a Fine for making Tenants, &c.*

THIS Indenture, &c. made between C. D. and F. his Wife, of the first Part, G. H. and J. K. of the second Part, and L. M. on the third Part, witnesseth, That it is mutually and respectively covenanted and concluded, by and between the said Parties to these Presents: And the said C. D. doth for himself, his Heirs, Executors and Administrators, and for the said F. his Wife, covenant, grant and agree, to and with the said L. M. his Heirs, Administrators and Executors, by these Presents, That he the said C. D. and F. his Wife, shall and will on this Side, and before the Feast of, &c. now next ensuing, levy and acknowledge in due Form of Law, one *Fine sur Conscience de Droit come ceo que ils ont de leur Done*, &c. with Proclamations to be had and made according to the common Course of Fines in such Cases used,
and

and the Statute in that Behalf made and provided, before the Justices of his Majesty's Court of Common Pleas at *Westminster*, to the said *G. H.* and *J. K.* and their Heirs, of all that the Manor of *M.* in the County of *E.* and of all Messuages, Lands, Tenements and Hereditaments whatsoever, which are, or are reputed Part or Parcel of the said Manor, or belonging or appertaining thereto, by such Name or Names, Quantities, Qualities, Contents and Number of Acres; and in such Manner and Form as by the said *L. M.* his Heirs or Assigns, or his or their Counsel learned in the Law, shall be reasonably devised, advised or required: Which said Fine, so or in any other Manner to be levied and acknowledged between the said Parties, shall be, and shall be construed, reputed, and taken to be to and for the Use of the said *G. H.* and *J. K.* and their Heirs, to the only End, Intent and Purpose, that the said *G. H.* and *J. K.* shall and may stand, and be full and perfect Tenants of the Freehold of the said Manor, Messuages, Lands and Premisses, and every Part thereof, whereof the said Fine is agreed to be levied, as aforesaid; until a full and perfect common Recovery shall and may be lawfully had and executed, of all the said Manors, Messuages, Lands and Premisses, against the said *G. H.* and *J. K.* and their Heirs; according to the true Intent and Meaning of these Presents, and the Parties thereunto.

In Witness, &c.

*An Indenture declaring the Uses of
a Fine by Way of Settlement.*

THIS Indenture made, &c. between G. H. of, &c. Esq; and J. his Wife, of the one Part, and K. L. of, &c. of the other Part, witnesseth, That the said G. H. and J. his Wife, for the settling and assuring the Manors, Lands, Tenements, Hereditaments and Premisses herein after mentioned, to the several Uses herein after declared and limited; and for divers other good Causes and Considerations, he the said G. H. hath covenanted and granted, and by these Presents doth covenant and grant for himself, his Heirs and Assigns, to and with the said K. L. his Heirs and Assigns, and the said J. Wife of the said G. H. doth consent and agree hereby, that the said G. H. and J. his Wife shall and will, before the End of *Michaelmas Term* next ensuing, acknowledge and levy in due Form of Law, before his Majesty's Justices of the Court of Common Pleas at *Westminster*, unto the said K. L. his Heirs and Assigns, one *Fine sur Conuſance de Droit come ceo*, &c. with Proclamations to be thereupon had, according to the Form of the Statute in that Case made, of all that the Manor of, &c. and of all that Messuage or Farm called, &c. and also the Reversion and Reversions, Remainder and Remainders, Rents, Issues, Profits and Services of the said Manor and Premisses abovementioned, and of every Part and Parcel thereof, with the Appurtenants, by the

the Names of twenty Messuages, twelve Cottages, three Mills, 500 Acres of Land, 300 Acres of Meadow, 400 Acres of Pasture, forty Acres of Wood, and fifty Pounds Rent, and Common of Pasture for all Manner of Cattle, &c. with the Appurtenants in, &c. aforesaid. And it is hereby agreed by and between the said Parties to these Presents, and the true Meaning hereof is; and it is hereby so declared, that the Fine so as aforesaid, or in any other Manner, to be had and levied of the said Manors and Premisses, or any Part thereof, and also all and every other Fine and Fines already had, levied, or to be had and levied of the same Premisses, or any Part thereof, shall be and enure, and shall be adjudged, esteemed, and taken to be and enure; and the said K. L. and his Heirs, and all and every other Person or Persons, and his and their Heirs, now standing and being seised, or which at the perfecting the said Fine shall stand or be seised of the said Manor and Premisses, or any Part thereof, shall at all Times hereafter stand and be seised thereof, and of every Part thereof, with the Appurtenants, to and for the several Uses, Intents and Purposes herein after limited, expressed, and declared; (that is to say) as for and concerning the said Manor, with its Rights, Members and Appurtenants, and all and singular the Messuages, Cottages, Lands, Tenements, Commons, Wastes, Waste-Grounds, Mines, Royalties, Rents and Hereditaments whatsoever, to the same Manor belonging or appertaining, or accepted, reputed or taken as Parcel or Member thereof, to the Use and Behoof of the said G. H. and J. K.

for

for and during the Term of their natural Lives, and the Life of the longest Liver of them; without Impeachment of or for any Manner of Waste, and with full Power and Authority for the said *G. H.* alone during his Life, and after his Death for the same *J.* alone, during her Life, to make and grant any Lease or Leases, Grant or Grants, by Copy of Court-Roll, for one, two, or three Life or Lives, in Possession or Reversion, of any Lands or Tenements, Parcel of the said Manor, which have been usually so granted; provided that there shall be no more than three Lives at any one Time upon the said Premises, or any Part thereof; and so as the usual Rents, Heriots and Services, or more, shall be reserved on such Leases and Copies respectively; and from and after the Decease of the said *G. H.* and *J.* his Wife, and the Survivor of them, then to the Use and Behoof of the right Heirs of the said *G. H.* for ever. And as for and concerning all and singular the said Messuage and Farm called, &c. with the Appurtenants, whereof the said Fine shall be so levied, and whereof no Use is herein before declared, to the only proper Use and Behoof of the said *G. H.* &c. his Heirs and Assigns, for ever, and to and for none other Use, Intent or Purpose whatsoever.

In Witness, &c.

A Mortgage of a Term of ninety-nine Years determinable on three Lives, subject to Redemption on paying a Sum of Money.

THIS Indenture made, &c. between G. H. of G. in the County of S. Esq; T. and B. H. Gent. Brothers of the said T. H. of the one Part, and R. K. of, &c. Esq; of the other Part, witnesseth, That for and in Consideration of the Sum of 1500 l. of lawful Money of England, by the said R. K. to the said G. H. T. H. and B. H. in Hand well and truly paid, at and before the Sealing and Delivery of these Presents, the Receipt whereof they do hereby acknowledge, and thereof acquit, release and discharge the said R. K. by these Presents they the said G. H. T. and B. H. have, and each of of them hath demised, granted, and to farm let, and by these Presents do, and each of them doth demise, grant, and to farm let unto the said R. K. all that, &c. and all the Arable Lands, Meadows, Pastures, Ways, Commons and Commodities, to the said Manor and Farm of, &c. appertaining, together with the Services of the Tenants not extended into Money; and the Tithe-Corn of the Demesne Lands of the Manor and Farm aforesaid, (except and reserved unto the Reverend Father in God, and his Successors, the Bishop of C. of whom the said Premises are holden for the Lives of the said G. and T. H.) all Rent of Assize, Works of Tenants

nants extended into Money, Fines, Heriots, Woods, Under-woods, Perquisites of Courts and Law-Days, Pannage of Hogs, as well of the Tenants as other Escheats, Forfeitures, and other Customs and Appurtenants not before demised nor let by these Presents; to have and to hold the said Site of the Manor aforesaid, with the Arable Lands, Meadows, Pasture, and all other the Premises, with the Appurtenants, (except as before excepted) unto the said R. K. his Executors, Administrators and Assigns, for, and during the Term of ninety-nine Years from henceforth next ensuing, and fully to be compleat and ended, if the said G. and T. H. shall so long live, subject to the Payment of the Annual Rents of twenty Pounds, and forty Shillings to the said Lord Bishop reserved.

Provided always, and upon this Condition nevertheless, That if they the said G. H. T. and R. H. their Heirs, Executors, Administrators or Assigns shall and will well and truly pay, or cause to be paid unto the said R. K. his Executors, Administrators or Assigns, the Sum of 1500 *l.* of lawful Money of *England*, with lawful Interest for the same from henceforth, upon the, &c. Day of, &c. next ensuing the Date of these Presents, at, or in, &c. without any Deduction, Defalcation or Abatement whatsoever, for, or by Reason of any Taxes, Charges or Impositions, or otherwise howsoever, then this present Indenture and Demise, and every Matter and Thing herein contained shall cease, determine, and become utterly void; any Thing herein contained to the contrary thereof in any ways notwithstanding. And the said G. H. T. and B. H. for themselves and their respective

Heirs

Heirs do, and each of them doth covenant, promise, grant and agree to, and with the said R. K. by these Presents, that they the said G. H. T. and B. H. their Executors, Administrators and Assigns shall, and will well and truly pay, or cause to be paid unto the said R. K. his Executors, Administrators or Assigns, the Sum of 1500 £. with legal Interest for the same from henceforth, at the Time and Place in the above-mentioned Proviso appointed for the Payment thereof, without any Deduction or Abatement, as aforesaid. And the said G. H. T. and B. H. for themselves, and for their Heirs, do jointly and severally covenant, promise, grant and agree, to and with the said R. K. by these presents, that for, and notwithstanding any Act, Matter or Thing whatsoever by them, or either of them, had, made, done, suffered or committed to the contrary, they the said G. H. T. and B. H. at the Time of the Execution of these Presents, hath good Right, Title, and full Power and Authority to grant the said Site of the Manor and Farm, with the Appurtenants, here- in before demised to the said R. K. in Manner aforesaid; and that they the said G. H. T. and B. H. have not, or hath not granted, aliened, assigned, or otherwise incumbered the said Premises in Title, Charge, Estate, or otherwise howsoever. And that for, and notwithstanding any Act, Matter or Thing, had, made, committed or done by the said G. H. T. and B. H. or either of them, as aforesaid, the said R. K. his Executors, Administrators or Assigns shall and may, from and after Default shall happen to be made in Payment of the 1500 £. with legal Interest, at the Time and Place aforesaid, enter upon all and singular the said Premises,

P

with

with the Appurtenants, and the same from thenceforth peaceably and quietly to have, hold, possess and enjoy, and the Rent, Issues and Profits thereof to take and receive to his and their own Use, during all the then Rest and Residue of the aforesaid Term of ninety-nine Years, determinable as aforesaid, without the Let, Suit, Trouble or Interruption of them the said *G. H. T.* and *B. H.* their, or either of their Executors or Administrators, or any other Person or Persons claiming from, by or under them, or any of them. And further, That they the said *G. H. T.* and *B. H.* their Executors, &c. and all and every other Person or Persons, any Estate having, as lawfully claiming from, by or under them, of, in, or to the aforesaid Premises, with the Appurtenants, shall and will from Time to Time, and at all Times after Default shall happen to be made in Payment of the said Sum of 1500 *l.* with legal Interest, as aforesaid, at the Request, Costs, Charges of the said *R. K.* his Executors, Administrators and Assigns, make, do and suffer any Act or Acts, Thing or Things, Conveyances and Assurances in the Law, for the further, better and more perfect assuring and conveying the said Manor, Messuage, Lands, Tenements, Hereditaments and Premises, with the Appurtenants, unto the said *R. K.* his Executors, Administrators and Assigns (except before excepted) for and during all the then Rest and Residue of the said Term of ninety-nine Years, determinable as aforesaid, as by his or their Counsel learned in the Law shall reasonably be devised, advised or required.

In Witness, &c.

A Deed

A Deed or Covenant to convey an Estate by Fine and Recovery, and other sufficient Conveyances, to the Use of a Son and the Heirs Male of his Body, until they or any of them shall go about to sell the same; Remainder to the Covenantee and his Heirs Male, to keep the Estate in the Name and Blood; with divers other Remainders, and Covenant for peaceable Enjoyment, free from Incumbrances, except Tenants Leases, and Title of Dower.

THIS Indenture made, &c. between *A. B.* of, &c. Esq; of one Part, and the Honourable Sir *C. D. Kt.* of the other Part, Witnesseeth, That for and in Consideration of the Sum of, &c. unto the said *A. B.* in Hand paid by the said Sir *C. D.* And for the Continuance and Preservation of the Manors, Lands, Tenements, and Hereditaments of the said *A. B.* in the Name and Blood of the *C.'s*; as also for divers other good Causes and Considerations, the said *A. B.* hereunto especially moving, he the said *A. B.* hath covenanted and granted, and by these Presents

doth covenant, grant and agree to and with the said Sir C. D. his Heirs and Assigns, that he the said A. B. and his Heirs shall and will from Time to Time, and at all Times hereafter, whensoever he or they, or any of them shall be reasonably required thereunto by the said Sir C. D. his Heirs and Assigns, and at the Costs and Charges in the Law of the said Sir C. D. his Heirs or Assigns, by Fine in due Form of Law, to be had and levied, and by Recovery, or by such other good and sufficient Conveyance and Assurance in the Law, as by the said Sir C. D. his Heirs and Assigns, or his or their Counsel learned in the Law, shall be devised or advised, well and sufficiently convey and assure unto the said Sir C. D. and his Heirs, or to such other Person or Persons, and his and their Heirs, as shall be nominated and appointed by the said Sir C. D. his Heirs or Assigns, to and for such Uses and Estates as are hereafter in these Presents limited, expressed and declared, all that Capital Messuage or Tenement called or known by the Name of, &c. with all Houses, &c. and also, &c. now in the Tenure or Occupation of the said A. B. or his Assigns; and also all those four Messuages, &c. situate, &c. which Fine and Recovery, Conveyance and Assurance, so to be had and made unto the said Sir C. D. and his Heirs, or unto such other Person or Persons as he or they shall nominate and appoint, and the Messuages, Lands, Tenements and Hereditaments aforesaid, immediately from and after the making and executing of the same Fine and Recovery, Conveyances and Assurances shall be adjudged, esteemed and taken,

ken; And the said Sir C. D. and his Heirs, and all and every other Person or Persons, and his and their Heirs, which at any Time or Times hereafter shall stand or be seised of the said Messuages, Lands, Tenements and Hereditaments, with their Appurtenants, of or in any Part or Parcel thereof, or that shall have Claim, or pretend to have any Estate, Right, Title or Interest of, in, or to the said Premises, or any Part or Parcel thereof, from, by or under the said *A. B.* or his Heirs, by Virtue of the said Conveyance or Assurance so to be had and made, shall stand and be seised thereof, and of every Part and Parcel thereof, to the several Uses, Intents and Purposes hereafter, by these Presents limited and declared; and to and for none other Use, Intent or Purpose whatsoever, (that is to say) To the Use and Behoof of the said *A. B.* for and during his natural Life, without Impeachment of, or for any Manner of Waste; and after the Decease of the said *A. B.* then to the Use and Behoof of *E. F.* Son of the said *A. B.* and of the Heirs Male of his Body lawfully begotten, until the said *E. F.* or any the Heirs Males of his Body, shall be fully resolved and determined, and shall attempt or go about to suffer any Recovery, levy any Fine, or make any Discontinuance of the said Capital Messuage, Messuages, Lands, Tenements and Hereditaments, and other the Premises abovementioned, or any Part thereof; or to make, cause or suffer to be made, any Act, Deed or Thing to any Person or Persons other than to the said Sir C. D. his Heirs or Assigns, whereby, or by Reason or Means

whereof the Estate-tail before limited and appointed by these Presents to the said *E. F.* and the Heirs Males of his Body lawfully begotten, or any Use, Estate or Remainder herein after limited, shall and may be barred, defeated, discontinued, altered or changed in the Premises, or any Part thereof; and after the Estate-tail before limited and appointed to the said *E. F.* and the Heirs Males of his Body lawfully begotten, determined and ended, then to the Use and Behoof of the said Sir *C. D.* and to the Heirs Males of his Body lawfully begotten; and for Want of such Issue Male of the Body of Sir *C. D.* then to the Right Honourable Sir *N. O. Kt.* one of his Majesty's principal Secretaries of State, for his Use and Behoof, and the Heirs Male of his Body lawfully begotten; and for Want of such Issue Male, then to the Use and Behoof of the right Heirs of the said *A. B.* for ever.

And the said *A. B.* for himself, his Heirs and Assigns, doth covenant and grant, to and with the said Sir *C. D.* his Heirs and Assigns, that the said Messuages, Lands, Tenements and Hereditaments, and all and singular the other Premises abovementioned, with their, and every of their Appurtenants, shall from Time to Time, and at all Times for ever hereafter, remain, continue, and be to and for the several Uses, Intents and Purposes herein before limited, expressed and declared, and to and for none other Use, Intent or Purpose whatsoever; and that free and clear, and freely and clearly acquitted and discharged of and from all and all Manner of former Bargains, Sales, Gifts, Grants, Leases, Mortgages, Jointures,

tures, Dower, Titles of Dower, Fines, Post-
Fines, Issues, Amerciaments, Recognizances,
Statutes, Judgments, Executions, Annuities,
Rents, and Arrearages of Rents, and of and
from all other Charges, Titles, Troubles, and
Incumbrances whatsoever heretofore had, made,
done or committed, or hereafter to be had, &c.
by the said *A. B.* his Heirs and Assigns, or by
any other Person or Persons lawfully claiming
from, by, or under him, except the Rents and
Services hereafter to grow due to the chief Lord
or Lords of the Fee or Fees of the said Pre-
misses, and all the Leases for Years heretofore
made, not exceeding the Number of one and
twenty Years, or three Lives, and whereupon
the ancient accustomed Rent or more is re-
served, and shall be due and payable, during
the said Estates, to such Person or Persons as
have, or shall have the immediate Reversion or
Remainder of the said Premises so leased, and
the Title of Dower of *W.* now Wife of the
said *A. B.* [Here may be added a Covenant
for future Assurance to the Uses above limited.]

In Witness, &c.

Preamble of a Deed.

That Husband and Wife shall levy a
Fine according to the Statute.

THIS *Indenture*, &c. between *A. B.* and *E.*
his Wife on the one Part, and *C. D.* of,
&c. on the other Part, witnesseth, That it is
covenanted, granted, concluded, and agreed by
and between the said Parties to these Presents;
and the said *A. B.* for himself, his Heirs, Ex-
ecutors and Administrators, and for the said *E.*
his Wife, doth covenant and grant to and with
the said *C. D.* his Heirs, Executors and Admin-
istrators, that he the said *A. B.* and *E.* his
Wife, shall and will on this Side, and before
the Feast of, &c. next ensuing the Date of these
Presents, before the Justices of our Sovereign
Lord the King, of his Majesty's Court of Com-
mon Pleas at *Westminster*, acknowledge and le-
vy one Fine *sur Conusance de Droit come cco que*
il ad de lour Done, &c. with Proclamations, ac-
cording to the Form of the Statute in such
Case made and provided, to the said *C. D.* of
all that Messuage, or Tenement, and Lands, &c.
by such Name and Names, Qualities, Quanti-
ties, and Number of Acres, as by the said *C. D.*
or his Counsel learned in the Law, shall be rea-
sonably devised, advised, or required, &c.

A Deed

A Deed to levy a Fine, and also declaring the Use of a third Part, &c.

THIS Indenture made, &c. between *A. B.* of, &c. of the one Part, and *C. D.* of the other Part, witnesseeth, That for divers good Causes and Considerations the said Parties thereunto moving, it is hereby concluded, covenanted, and agreed on and between all and every the said Parties to these Presents, for them and their Heirs, and the said *A. B.* for himself and his Heirs doth covenant and grant to and with the said *C. D.* his Heirs, Executors, and Administrators by these Presents, that he the said *A. B.* shall and will, at the Costs and Charges of the said *C. D.* his Heirs and Assigns, or some of them, by the End of this present *Hillary* Term, acknowledge and levy, in due Form of Law, before the Justices of his Majesty's Court of Common Pleas at *Westminster*, one Fine *sur Conuissance de Droit come ceo*, &c. to be ingrossed, recorded, and sued forth with Proclamations, according to the Statutes in that Case made and provided, and the usual Course of Fines, with Proclamations, in such Case used and accustomed, unto the said *C. D.* and his Heirs, of all that full third Part (in three Parts to be divided) of one Messuage or Tenement, with the Appurtenances, &c. and of all Barns and Stables, Out-houses, Orchards, Gardens, Back-sides, Lands, Tenements, Meadows, Pastures, Feedings, Commons, Woods, Under-woods,

woods, Ways, Paths, Waters, Lights, Easements, Profits, Commodities, Emoluments, Advantages, and Hereditaments whatsoever, to the said Messuages or Tenements and Cottages belonging or appertaining, or therewithal usually let, occupied or enjoyed; and also of all that full third Part of all those Lands, Arable, Meadow and Pasture, which now are, or at any Time heretofore have been usually demised, let or occupied to or with the same Messuages or Tenements, and Cottages, as Part, Parcel, or Member thereof, or thereunto belonging or appertaining; and of all and singular other the Tenements, Messuages, Farms, Cottages, Lands, Meadows, Pastures, and Hereditaments whatsoever of him the said *A. B.* situate, &c. or in any other Town, Parish, or Place whatsoever in the said County of *H.* which were the Freehold and Inheritance at the Common Law of *E. B.* deceased, elder Brother of the said *A. B.* by the Names of *T.* &c. or by such other apt and convenient Name and Names, Numbers of Messuages and Acres, Quantities and Qualities of Land, and other Certainties as shall be fit and requisite in that Behalf. Which Fine, and all other Fines, after the Date of these Presents, levied, or to be levied by the said *A. B.* to the said *C. D.* of the Premises, or any Part or Parcel thereof, shall be and enure, and shall be adjudged, construed, expounded, deemed, and taken to be and enure, and by these Presents, and by all the said Parties to these Presents, declared and agreed to be and enure, and at the Time of levying thereof to be and have been levied, to the Use and Behoof of the said

C. D.

C. D. his Heirs and Assigns, and to and for none other Use, Intent, &c.

In Witness, &c.

*To levy a Fine in the County of
Lancaster.*

THIS *Indenture* made, &c. between *A. B.* of the one Part, and *C. D.* and *E. F.* of, &c. of the other Part, witnesseth, That it is covenanted, granted, concluded, and agreed by and between all and every the Parties to these Presents; and the said *A. B.* for himself, his Heirs, Executors and Administrators, doth covenant, grant, and agree to and with the said *C. D.* and *E. F.* and either of them, their or either of their Heirs, Executors, and Administrators by these Presents, that he the said *A. B.* shall and will, at the next Assizes or General Great Sessions for Pleas, to be holden at *Lancaster* before the Justice or Justices of our Sovereign Lord the King there for the Time being, levy and acknowledge one Fine *sur Conusance de droit*, &c. with Proclamations thereupon, to be had in due Form of Law, unto the said *C. D.* *E. F.* and their Heirs, of and in all and singular those several Messuages or Tenements, &c. by the Name of two Messuages, two Gardens, ten Acres of Land, &c. with the Appurtenances in *G.* in the County of *Lancaster* aforesaid, &c.

Form

*Form of an Indenture to lead the
Uses of a Fine on a Purchase.*

THIS Indenture made, &c. between *A. B.* of, &c. Esq; and *C.* his Wife of the one Part, and *E. F.* of, &c. of the other Part, witnesseth, That for and in Consideration of the Sum of 800 *l.* of lawful *Britiss* Money to the said *A. B.* and *C.* his Wife, in Hand paid by the said *E. F.* the Receipt whereof they do hereby acknowledge, and for divers other good Causes and Considerations, he the said *A. B.* hath covenanted and granted, and by these Presents doth covenant and grant to and with the said *E. F.* his Heirs and Assigns, that he the said *A. B.* and *C.* his Wife, shall and will, on this Side and before the End of *Easter* Term next coming, before the King's Majesty's Justices of his Court of Common Pleas at *Westminster*, in due Form of Law, levy and acknowledge unto the said *E. F.* and his Heirs, one Fine *sur Conusance de droit come ceo*, &c. with Proclamations to be thereupon had, according to the Form of the Statute in that Case made and provided, of all that Messuage or Tenement, with the Appurtenances, situate, &c. And also of all those Pieces or Parcels of Land, lying and being, &c. and containing, &c. with all and singular their Appurtenances; all which said Premises were formerly purchased of, &c. and are now in the Tenure of, &c. and also of the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises

misses abovementioned, and of every Part and Parcel thereof, with the Appurtenances, by such Name and Names, Quantity and Number of Acres and Things, and in such Manner as by the said *E. F.* or his Counsel learned in the Law, shall be devised, advised or required. Which said Fine so to be had and levied, and all and every other Fine and Fines so to be had and levied, or at any Time hereafter to be had, levied, sued, or prosecuted of the said Premisses, or any Part thereof by itself, or jointly with any other Lands or Tenements, by or between the said Parties to these Presents, or by or between them, or any or either of them, and any other Person or Persons, as for and concerning all and singular the said Premisses above-mentioned, with the Appurtenances, shall be and enure, and shall be adjudged, esteemed, and taken to be and enure to and for the only proper Use and Behoof of the said *E. F.* his Heirs and Assigns for ever, and to and for none other Use, Intent, or Purpose whatsoever.

In Witness, &c.

*A Deed to lead the Uses of a Fine
and Recovery on Purchase.*

THIS Indenture Tripartite made, &c. between *A. B.* of, &c. and *M.* his Wife, *C. D.* of, &c. and *E.* his Wife, of the first Part, *E. F.* and *G. H.* both of, &c. of the second Part, and *J. K.* of, &c. and *L. M.* of, &c. of the third Part, witnesseth, That for and in Consideration of the Sum of, &c. to the said *A. B.*
and

and *M.* his Wife, and *C. D.* and *E.* his Wife in Hand paid by the said *J. K.* and *L. M.* the Receipt whereof they do hereby acknowledge; and in Consideration also of *5 s.* of, &c. to the said *A. B.* and *M.* his Wife, and *C. D.* and *E.* his Wife, in Hand paid by the said *E. F.* and *G. H.* the Receipt whereof is hereby acknowledged; and the said *A. B.* and *C. D.* for the Barring, Docking, Cutting off and Destroying of all Estates-tail and Remainders over now in Being, in and upon the Messuage, Lands, Tenements, and Hereditaments herein after mentioned, and for conveying and assuring the same Premises to the only proper Use and behoof of the said *J. K.* *L. M.* and their Heirs, they the said *A. B.* and *C. D.* have, and each of them hath covenanted and granted, and by these Presents do covenant, and each of them doth covenant and grant to and with the said *E. F.* and *G. H.* their Heirs and Assigns, that they the said *A. B.* and *M.* his Wife, and *C. D.* and *E.* his Wife, shall and will, on this Side and before the End of *Easter* Term next coming, and before the King's Majesty's Justices of his Court of Common Pleas at *Westminster*, in due Form of Law, levy and acknowledge unto the said *E. F.* and *G. H.* and their Heirs, or to the Heirs of one of them, one Fine *sur Conusance de droit come ceo*, &c. with Proclamations to be thereupon had, according to the Form of the Statute in that Case made and provided, of all that their Messuage or Tenement, &c. in the Tenure of, &c. with all and singular its Appurtenances, and also of the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premises above-mentioned, and of every Part and

and Parcel thereof, with the Appurtenances, by such Name and Names, Quantity and Number of Messuages, Acres and Things, and in such Manner and Form as by the said *E. F.* and *G. H.* or their Counsel learned in the Law, shall be reasonably advised, or devised and required. Which said Fine so to be had and levied in Manner aforesaid, and all and every other Fine and Fines already had, or at any Time hereafter to be had, levied, sued, or prosecuted of the said Premisses, or any Part thereof, by itself or jointly with any other Lands or Tenements, by or between the said Parties to these Presents, or between them or any or either of them, and any other Person or Persons, before the End of the said next *Easter* Term, as for and concerning all and singular the said Premisses above-mentioned, with the Appurtenances, shall be and enure, and shall be adjudged, esteemed, and taken to be and enure to and for the only proper Use and Behoof of the said *E. F.* and *G. H.* their Heirs and Assigns, to the Intent and Purpose only, that they may become perfect Tenants of the Freehold of the said Premisses. And to this further End, Intent and Purpose, that they the said *E. F.* and *G. H.* shall and will, on this Side and before the End of, &c. Term next, permit and suffer the said *J. K.* and *L. M.* to sue and prosecute one or more Writ or Writs of Entry *sur Disseisin en le post*, returnable before the King's Majesty's Justices of the said Court of Common Pleas, against them the said *E. F.* and *G. H.* of all and singular the said Premisses above-mentioned, and of every Part and Parcel thereof, with the Appurtenances, by such Name and Names, Quantity and

and Number of Messuages, Acres and Things, and in such Sort, Manner and Form, as by the said *J. K.* and *L. M.* shall be thought fit and convenient; unto which said Writ of Entry so to be brought, the said *E. F.* and *G. H.* shall appear, and vouch to Warranty the said *A. B.* and *M.* his Wife, and *C. D.* and *E.* his Wife, who shall likewise appear, either in their several Persons, or by their Attorney, lawfully authoriz'd, and enter into the said Warranty; and, after their Entry into the Warranty, shall vouch over the common Vouchee, who shall likewise enter into the said Warranty and Imparl, and afterwards make Default. To the End that one perfect common Recovery shall and may, of all and singular the said Premisses above-mention'd, be had, prosecuted, and executed in all Things, according to the usual Form and Order of common Recoveries for Assurance of Lands, Tenements, and Hereditaments in such Cases used and accustomed; and the same Recovery shall also, in due Form of Law, be executed by one Writ of *Habere fac. Seisinam* accordingly. And it is covenanted, granted, concluded, and agreed by and between the said Parties to these Presents; and the true Meaning also is, and it is hereby so declared, that the said Recovery so, or in any other Manner to be had or suffered, and all and every other Recovery and Recoveries so to be had, suffered, and executed of the said Premisses, or any Part thereof, or by or between the said Parties to these Presents, or by or between them, or any or either of them, and any other Person and Persons, on this Side and before the End of, &c. Term next coming, and the full Force and Execution of them, and every

of them, and all other Assurance and Assurances of the said Premisses, or any Part thereof had, or to be had and made between the said Parties to these Presents, or any of them, shall be and enure, and shall be adjudged, esteemed, and taken to be and enure to and for the only proper Use and Behoof of the said *J. K.* and *L. M.* their Heirs and Assigns for ever, and to and for none other Use, Intent or Purpose whatsoever.

And each of them the said *A. B.* and *C. D.* for himself, severally and apart, and not jointly, and for his several and respective Heirs and Assigns, doth severally and apart, and not jointly, covenant and grant to and with the said *J. K.* and *L. M.* their Heirs and Assigns, that they the said *A. B.* and *M.* his Wife, and *C. D.* and *E.* his Wife, are, or some or one of them now is, lawfully and rightfully seised of a good, sure, perfect and indefeasible Estate of Inheritance in Fee-simple, or Fee-tail, of and in the said Premisses above-mentioned, with the Appurtenances, in their or some or one of their own Right or Rights, without any Condition, Mortgage, Limitation of Use or Uses, or other Matter or Thing, to alter, charge, change and determine the same; and also, that they the said *J. K.* and *L. M.* their Heirs and Assigns, shall and may, from Time to Time, and at all Times hereafter, for ever peaceably and quietly enter into, have, hold, occupy, possess and enjoy all and singular the said Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, without the Let, Trouble, Hinderance, Molestation, Interruption and Denial of them the said *A. B.* and *M.* his
Wife,

Wife, and *C. D.* and *E.* his Wife, their Heirs and Assigns, and of all and every other Person or Persons whatsoever claiming, or to claim by, from or under them, or any or either of them, or by or under, &c. deceased.

And further, That they the said *A. B.* and *M.* his Wife, and *C. D.* and *E.* his Wife, and their Heirs, and all and every other Person or Persons, and his and their Heirs, any Thing having or claiming in the said Premises above-mentioned, or any Part thereof, by, from, or under them, or any or either of them, or under the said, &c. shall and will, at any Time or Times hereafter, upon the reasonable Request, and at the Cost and Charges of the said *J. K.* and *L. M.* their Heirs and Assigns, make, do and execute, or cause or procure to be made, &c. all and every such further and other lawful and reasonable Grants, Acts, and Assurances in the Law whatsoever, for the further, better, and more perfect Granting, Conveying, and Assuring of all and singular the said Premises above-mentioned, with the Appurtenances, unto the said *J. K.* and *L. M.* their Heirs and Assigns, to the only proper Use and Behoof of the said *J. K.* and *L. M.* their Heirs and Assigns for ever, according to the true Intent and Meaning of these Presents, as by the said *J. K.* and *L. M.* their Heirs or Assigns, or their or either of their Counsel learned in the Law, shall be reasonably devised, or advised and required.

In Witness, &c.

Of Exchanges.

A Deed of Exchange is a mutual Grant, of equal Interest in Lands or Tenements held in Fee-simple, Fee-tail, for Life or Years, the one in Exchange for the other; and in this Deed there is a double Grant, each granting that which is his to the other. *Co. Litt.* 501.

In Exchanges there must be two Grants, and each contain the Word *Exchange*, or else it will work only as a Deed of Grant; and if it be for Life, Livery and Seisin must be had, both the Estates must be equal, but they need not be of one Nature, nor of equal Value, so as they are made of Lands or Tenements, for Lands must be exchanged for Lands, Rent, Common, or other Inheritance which concerns Lands or Tenements, or Spiritual Things for Temporal, so that they are both in the Realty as Advowson for Lands. *Perk. S.* 265.

A Fee-simple Estate being exchanged for a Fee-tail, or a Tail general for special Tail, &c. these Estates being not equal, the Exchange is void.

Exchanges may be made to take Effect *in futuro*, as well as *in præfenti*, but in all of them there must be Execution by Entry in the Life of the Parties; for if one of them die before the Exchange be executed by Entry or Claim, the Exchange is void. *4 Co.* 121.

For in every Exchange is implied a Condition of Re-entry and Warranty, Voucher and Recompence of the other Land that was given in Exchange; and an Exchanger may re-enter up-

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on an Assignee that has a Condition to give a Re-entry upon all the Land given in Exchange, if he be ejected of any Part of the Land taken in Exchange, and a Warranty to enable him to vouch, and to recover over in Value so much of his own Land again.

The Introduction of the Uses on a Fine levied.

THIS Indenture made, &c. between *A. B.* and *C.* his Wife, of one Part, and *D. E.* and *F. G.* of the other Part: Whereas the said *A. B.* and *C.* his Wife have, in the Term of *St. Michael* last Past, before the Date of these Presents, levied a Fine in due Form of Law, unto the said *D. E.* and *F. G.* of all, &c. the which Fine was levied by such Names, Number of Acres, and other Particulars as are in the Fine contained, as by the said Fine, Relation being thereto had, doth more fully appear. Now this Indenture witnesseth, and it is hereby declared by and between all the Parties hereunto, That the true Intent and Meaning of the levying the said Fine, at the Time of the Levying thereof, was and is to be taken to be to the Uses, Intents, and Purposes hereafter following; that is to say, to the Use of, &c.

A Deed

A Deed to rectify a Mistake in a Fine formerly levied, and to declare the Use of a new Fine.

THIS Indenture Tripartite made, &c. between V. M. of, &c. of the first Part, F. Hough of, &c. of the second Part, and the Right Honourable E. Earl of C. &c. Executors and Trustees named in the last Will and Testament of E. deceased, of the third Part: Whereas the said V. M. hath, in Trinity Term last past, before the Date hereof, together with the said F. Hough, and one F. B. joined in the Levying of a Fine to the said E. Earl of C. &c. and their Heirs, among other Lands, of all that Messuage, &c. all which, &c. And whereas the said Fine so levied by the said V. M. and F. H. as aforesaid, was levied in order to rectify a Mistake committed in a former Fine of the said Premisses, levied by the said V. M. among others; in which said Fine the said F. Hough, by Error, is named F. Hiff: And whereas the said E. Earl of C. &c. hath purchased of the said F. Hough the said Messuage or Tenement, Closes, Tithes, Hereditaments and Premisses, for the Sum of, &c. of lawful Money of Great Britain. Now this Indenture witnesseth, and it is hereby declared, covenanted, and agreed by and between the said Parties to these

V. M. sold his Estate to Hough; but by a Mistake in the Fine he is call'd Hiff. Hough afterwards sells this Estate, and V. M. joins with Hough in a new Fine; and this Deed is to declare the Uses of the new and all other, &c. to the Purchasers.

Presents, and the said *F. H.* and *V. M.* for themselves and their Heirs, do declare and agree, that the said Fine herein before-mentioned to be levied by the said *V. M.* and *F. Hough*, to the said *E.* of, &c. and his Heirs, as aforesaid, and all and every other Fine or Fines whatsoever heretofore had and levied, or hereafter to be had and levied of the said Premises, by and between the said Parties to these Presents, shall be and enure, and shall be adjudged, deemed, and taken to be and enure to the only proper Use and Behoof of the said *E.* Earl of C. &c. his Heirs and Assigns for ever, and to and for no other Use, Intent or Purpose whatsoever, or otherwise howsoever.

In Witness, &c.

*Form of an Indenture to lead the
Uses of a Fine on a Purchase.*

THIS Indenture made, &c. between *V. C.* of, &c. Esq; and *B.* his Wife, of the one Part, and *S. E.* of the other Part, witnesseth, That for and in Consideration of the Sum of 1000 *l.* of lawful *British* Money to the said *V. C.* and *B.* his Wife, in Hand paid by the said *S. E.* of, &c. the Receipt whereof they do hereby acknowledge; and for divers other good Causes and Considerations, he the said *V. C.* hath covenanted and granted, and by these Presents doth covenant and grant to and with the said *S. E.* his Heirs and Assigns, that he the said *V. C.* and *B.* his Wife, shall and will, on this Side and before the End of *Easter* Term

next

next coming, before the King's Majesty's Justices of his Court of Common Pleas at *Westminster*, in due Form of Law, levy and acknowledge unto the said *S. E.* and his Heirs, one Fine *sur Conusance de droit come ceo*, &c. with Proclamations to be thereupon had, according to the Statute in that Case made and provided, of all that Messuage and Tenement, with the Appurtenances, situate, &c. and also of all those Pieces or Parcels of Land lying and being, &c. and containing, &c. with all their Appurtenances, all which said Premisses were formerly purchased of, &c. and are now in the Tenure of, &c. and also of the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premisses above-mentioned, and of every Part and Parcel thereof, with the Appurtenances, by such Name and Names, Quantity and Number of Acres and Things, and in such Manner as by the said *S. E.* or his Counsel learned in the Law, shall be reasonably devised, advised or required; which said Fine so to be had and levied, and all and every other Fine and Fines already had, or at any Time hereafter to be had and levied, sued or prosecuted of the said Premisses, or any Part thereof, by itself or jointly with any other Lands or Tenements, by or between the said Parties to these Presents, or by or between them, or any or either of them, and any other Person or Persons, as for and concerning all and singular the said Premisses above-mentioned, with the Appurtenances, shall be and enure, and shall be adjudg'd, esteem'd, and taken to be and enure to and for the only proper Use and Behoof of the said *S. E.* his Heirs and As-

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signs for ever, and to and for none other Use,
Intent or Purpose whatsoever.

In Witness, &c.

*An Attornment of Tenants to a
Mortgagee, the Estate they occupy
being Mortgage.*

TO all to whom these Presents shall come,
P. G. of T. in the County of, &c. Esq;
R. N. Yeoman, W. A. J. P. and J. H. Yeoman, send Greeting.

Whereas the said R. N. holds of, and rents of the said P. G. a certain Farm called *W. Farm*, and the said W. A. rents Part of T. Farm, and J. P. another Part thereof, and the said J. H. rents a Farm called P. And whereas the said Farms are in Mortgage to R. R. of L. in the County of B. Esq; and his Trustees for 400 l. principal Money, on which Mortgage there is a great Arrear of Interest; and whereas the said P. G. is willing and desirous that the said Robert R. should have the Possession of the said Premises, and receive the Rents thereof, and to that End hath agreed, that the said respective Tenants shall attorn and become Tenants to the said R. R. and from henceforth pay their respective Rents to him the said R. R. and his Assigns. Now know ye, That the said R. N. W. A. J. P. and J. H. by the Direction of the said P. G. testified by his being Party to, and signing and sealing this present Writing, have attorned and become Tenants, and by these Presents do attorn and become Tenants to the
said

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said R. R. and in Testimony of this Attorn-
ment have, and each of them hath paid to the
said R. R. Six-pence; and the said R. N. W. A.
J. P. and J. H. for themselves, severally and
each apart for himself, and not jointly, and for
their several and not Joint-Heirs, Executors,
and Administrators, do hereby covenant and
agree to and with the said Robert R. that they
will from henceforward respectively pay their
respective Rents due and payable for their re-
spective Farms to the said R. R. or his Assigns,
and shall not or will deliver Possession of the
said Farms to any other Person, unless com-
pelled thereto by Law or Equity. *In Witness*
whereof the said P. G. R. N. W. A. J. P. and
J. H. have hereunto set their Hands and Seals, the
Day of in the tenth Year
of, &c. and in the Year of our Lord, &c.

Indenture

Indenture to lead the Uses of a Fine of a Manor and Lands, to be levied by the Husband, by way of Settlement to the Husband and Wife for their Lives, with Power to grant Leases or Copies for Lives; and after the Decease of the Survivor of them, to the Use of the right Heirs of the Husband, &c.

THIS *Indenture* made, &c. between Sir J. S. of, &c. Bart. and Dame E. his Wife, (one of the Daughters of Sir A. E. late of, &c. and of Dame E. his Wife, late also deceased) of the one Part, and W. E. of, &c. Esq; of the other Part, witnesseth, That the said Sir J. S. and Dame E. his Wife, for the settling and assuring the Manors, Lands, Tenements, and Hereditaments herein after mentioned, to the several Uses, Intents and Purposes herein after declared, limited and appointed, and for divers other good Causes and Considerations, he the said Sir J. S. hath covenanted and granted, and by these Presents doth, for himself, his Heirs and Assigns, covenant and grant to and with the said W. E. his Heirs and Assigns; and the said Dame E. Wife of the said Sir J. S. doth hereby consent and agree, that they the said Sir J. S. and Dame E. his Wife, shall and will, before

before the End of *Trinity* Term next ensuing, acknowledge and levy, in due Form of Law, before his Majesty's Justices of the Court of Common Pleas at *Westminster*, unto the said *W. E.* his Heirs and Assigns, one Fine *sur Conuissance de droit come ceo*, &c. with Proclamations to be thereupon had, according to the Form of the Statute in that Case made and provided, of all that their Manor of, &c. and also of all that, &c. situate, lying and being, &c. and also the Reversion and Reversions, Remainder and Remainders, Rents and Services of all and singular the said Manors and Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, by the Names of thirty Messuages, forty Cottages, five Water-Mills, eight Hundred Acres of Meadow, nine Hundred Acres of Land, three Hundred Acres of Pasture, sixty Acres of Wood, eighty Acres of Furse and Heath, and 35 *l.* Rent and Common of Pasture, with the Appurtenances in, &c. aforesaid: And it is hereby agreed by and between the said Parties to these Presents, and the true Meaning hereof is, and it is hereby so declared, that the said Fine, so as aforesaid, or in any other Manner to be levied of the said Manors and Premises, or any Part thereof, and also all and every other Fine and Fines already had and levied, or to be had and levied of the same Premises, or any Part thereof, either alone, by itself, or jointly with any other Manors, Lands or Tenements, by or between the said Parties to these Presents, or by or between them, or any or either of them, and any other Person or Persons, as for and concerning the said Manor and Premises above-mentioned,

with

with the Appurtenances, shall be and enure, and shall be adjudged, esteemed, and taken to be and enure; and the said *W. E.* and his Heirs, and all and every other Person or Persons, and his or their Heirs, now standing and being seised, or which at the perfecting of the said Fine shall stand or be seised of the said Manor and Premises, or any Part thereof, shall at all Times thence-after stand and be seised thereof, and of every Part and Parcel thereof, with the Appurtenances, to and for the several Uses, Intents and Purposes herein after limited, expressed and declared, (that is to say) as for and concerning the said Manor of, &c. with the Rights, Members, and Appurtenances thereof, and all and singular the Messuages, Farms, Cottages, Lands, Tenements, Commons, Wastes, Waste Grounds, Moors, Marshes, Coal-pits, Coal-mines, and Veins of Coal, Courts, Profits and Perquisites of Courts, Rents, Royalties, Fishings, and Hereditaments whatsoever, to the same Manor belonging, or in any wise appertaining, or accepted, reputed, or taken as Part, Parcel, or Member thereof, to the Use and behoof of the said Sir *J. S.* and Dame *E.* his Wife, for and during the Term of their natural Lives, and the Life of the longest Liver of them, without Impeachment of or for any Manner of Waste, and with full Power, Liberty, and Authority for the said Sir *J. S.* alone, during his Life, and after his Death, for the said Dame *E.* alone, during her Life, to make and grant any Lease or Leases, Grant or Grants, by Copy of Court-Roll, for one, two, three, four, or five Life or Lives, in Possession or Reversion of any Lands or Tenements, Parcel of

of the said Manor which have been usually so granted, provided that there shall be no more than five Lives at any one Time in Being on the said Premises, or any Part thereof, and so as the usual Rents, Heriots and Services, or more shall be reserved on such Leases and Copies respectively; and from and after the Deceases of the said Sir J. S. and Dame E. his Wife, and the Survivor of them, then to the Use and Behoof of the right Heirs of the said Sir J. S. for ever: And as for and concerning all and singular the other Messuages, Farms, Cottages, &c. whatsoever, whereof the said Fine shall be so levied, and whereof no Use is herein before declared, to the only proper Use and Behoof of the said Sir J. S. his Heirs and Assigns for ever, and to and for none other Use, Intent, or Purpose whatsoever.

In Witness, &c.

*An Indenture for acknowledging a
Fine of a Rent.*

THIS Indenture made, &c. between A. B. of, &c. Esq; and C. his Wife, of the one Part, and D. E. of, &c. of the other Part, witnesseth, That it is covenanted and agreed by and between the said Parties to these Presents and the said A. B. for himself, his Heirs and Assigns, doth covenant and grant to and with the said D. E. his Heirs and Assigns, and the said C. Wife of the said A. B. doth hereby agree, that they the said A. B. and C. his Wife, shall and will, before the End of Michaelmas
Term

Term next coming, at the Costs and Charges in the Law of the said *D. E.* acknowledge and levy, in due Form of Law, before the King's Majesty's Justices of the Court of Common Pleas at *Westminster*, unto the said *D. E.* his Heirs and Assigns, one or more Fine or Fines, with Proclamations to be thereupon had, according to the Form of the Statute in that Case made and provided, of all that yearly Rent of 15 *l.* issuing out of one Messuage or Tenement, &c. situate, &c. in the Possession, &c. payable at the Feasts of the Annunciation of the Blessed Virgin *Mary* and St. *Michael* the Archangel, by equal Portions, and by the same Fine and Fines shall acknowledge the said yearly Rent to be the Right of the said *D. E.* And the same, by the said Fine or Fines, shall remise and quitclaim, for them the said *A. B.* and *C.* his Wife, and their Heirs, to the said *D. E.* and his Heirs for ever; and also the said *A. B.* and *C.* his Wife, shall, by the said Fine and Fines, grant for them and the Heirs of the said *A.* that they shall warrant to the said *D. E.* and his Heirs, the said Rent, against them the said *A. B.* and *C.* his Wife, and the Heirs of the said *A.* for ever, as by the Counsel of the said *D. E.* learned in the Law, shall be reasonably devised or advised. And it is hereby declared, by and between the said Parties to these Presents, That the said Fine, so as aforesaid, or in any other Manner to be levied of the said yearly Rent above-mentioned, and all and every other Fine and Fines already had and levied, or to be had, levied, and acknowledged of the said Rent, or any Part thereof, shall be and enure, and shall be esteemed and taken to be and enure; and the

the said *D. E.* and his Heirs, and all and every other Person or Persons, and his and their Heirs, now standing and being seised, or which, at the Time of perfecting the said Fine, shall stand or be seised of the said yearly Rent or Premises, or any Part thereof, shall at all Times thence-after stand and be seised thereof, and of every Part thereof, with the Appurtenances, to the only proper Use and Behoof of the said *D. E.* his Heirs and Assigns for ever, and to and for none other Use, Intent, or Purpose whatsoever.

In Witness, &c.

*A Deed to declare the Uses of a
Fine levied.*

THIS Indenture made, &c. between *R. D.* of, &c. Esq; of the one Part, and *S. D.* of, &c. Esq; of the other Part: Whereas the said *R. D.* being, by Virtue of the Settlement made on his first Marriage, seised of a Remainder in Tail, after the Remainder so limited to his first and other Sons, by *M. W.* his first Wife by the said Settlement, did, in *Easter* Term, in the ninth Year of the Reign of his said Majesty King *George* the Second, levy before his said Majesty's Justices of the Court of Common Pleas at *Westminster*, one Fine *sur Connaissance de droit come ceo*, &c. with Proclamations, according to the Form of the Statute in such Case made and provided, unto the said *S. D.* and his Heirs, of the feudal Manors and Lordships, Messuages, Lands, Tenements and
Here-

Hereditaments, situate, lying, and being in the County of *L.* and of all other the Lands, Tenements and Hereditaments of him the said *R. D.* in the said County of *Lincoln*, herein after mentioned, by the Names of the Manors of *W.* and *O.* with the Appurtenances, and of twenty Messuages; so both, &c. (as in the Fine) as by the said Fine remaining of Record in his Majesty's said Court of Common Pleas at *Westminster*, Relation being thereunto had, may more fully appear. *Now this Indenture Witnesseth*, and it is hereby covenanted, declared, and agreed by and between the said Parties to these Presents, that the said Fine so levied of the said Manors, Messuages, Advowsons, Lands, Tenements, Hereditaments and Premises, in Manner as aforesaid, and all and every Fine or Fines of the said Manors, Messuages, Advowson, Lands, Tenements, Hereditaments and Premises, wherein or whereunto the said *R. D.* and *S. D.* were or are Parties or Privy, shall be and enure, and shall be construed, deemed, and taken to be and enure, and is and are hereby declared to be and enure, without Prejudice, as aforesaid, to the only proper Use and Belhoof of the said *R. D.* his Heirs and Assigns for ever, and to and for none other Use, Intent, or Purpose whatsoever.

In Witness, &c.

*A Deed of Covenant for levying a
Fine, by a Man and his Wife, of
the Wife's Land.*

THIS Indenture made, &c. between J. H. of, &c. Esq; and W. his Wife, of the one Part, and J. S. of, &c. Esq; and W. W. of, &c. Esq; of the other Part, witnesseth, That for Settling, Conveying, and Assuring the several Manors, Lands, Tenements, and Hereditaments herein after mentioned, to the several Uses, Intents, and Purposes herein after declared and expressed, and for divers other good Causes and valuable Considerations hereunto moving, he the said J. H. for himself, and the said W. his Wife, doth covenant, promise, and grant to and with the said J. S. and W. W. their Heirs and Assigns, that he the said J. H. and W. his Wife, shall and will, at the Cost and Charges of the said J. H. on this Side or before the End of *Trinity* Term next ensuing the Date of these Presents, before his Majesty's Justices of the Court of Common Pleas at *Westminster*, levy to the said J. S. and W. W. and the Heirs of one of them, one or more Fine or Fines *sur Conusance de droit come ceo*, &c. with Proclamations, according to the usual Course of Fines used in the said Court of Common Pleas, of all those the Manors and reputed Manors of K. P. G. R. with all and every the Rents, Royalties, Members, and Appurtenances in the County of N. and of all those the Tithes of *Bull-park*, and of all and singular the

R. free-

freehold Messuages, Lands, Tenements and Hereditaments, Rectories impropriate, Advowsons, Tithes, Glebe Lands, Rents, Reversions, Services and Hereditaments of the said *J. H.* and *W.* his Wife, situate, lying, and being in *K. F. &c.* in the said County of *N.* whereof or wherein the said *J. H.* and *W.* his Wife, or any other Person or Persons in Trust for them, or either of them, is or are seised of any Estate of Freehold or Inheritance, in Possession, Reversion, Remainder or Expectancy, and of all other the Manors, Messuages, Farms, Lands, Tenements, Tithes, and Hereditaments of the said *W.* in the said County of *N.* and of the Reversion and Reversions, Remainder and Remainders of the said Premises, and of all the Estate, Right, Title, Interest and Property, Use, Trust, Possession, Claim, and Demand of the said *J. H.* and *T. W.* his Wife, of, in, and to the said several Manors, Lands, Tenements, Hereditaments and Premises, and of all Messuages, Barns, &c. Hereditaments, and Appurtenances to the said several Manors and Premises belonging, or in any wise appertaining, by such Descriptions, Quantities and Qualities, as will effectually comprize the same; which said Fine or Fines, so as aforesaid, or in any other Manner, or at any other Time levied, or to be levied, shall be and enure, and are by all the said Parties to these Presents declared to be and enure to the Uses, Intents, and Purposes herein after mentioned, declared and expressed; that is to say, to the Use and Behoof of the said *J. H.* and his Assigns, for and during the Term of his natural Life; and from and after his Decease, to the Use and Behoof of the said *W. H.* her Heirs

Heirs and Assigns for ever, together with such Powers, Privileges, Advantages, and Authorities as are herein after mentioned and reserved; that is to say, that it shall and may be lawful to and for the said *W. H.* at any Time or Times, during the Term of her natural Life, jointly with the said *J. H.* her Husband, or any other Husband she shall hereafter happen to marry, or without the Consent of *J. H.* or any other Husband, and as if she were Sole and unmarried, as often as she shall see Occasion, at her Will and Pleasure, by any Deed or Deeds, Writing or Writings, to be by her sealed and executed in the Presence of three or more credible Witnesses, or by her last Will and Testament to limit and appoint any new or other Use or Uses, Estate or Estates, of, in, or concerning the said Manors, Lands, Tenements, and Hereditaments comprised, or intended to be comprised in the said Fine or Fines, or for or concerning any Part or Parts, Parcel or Parcels thereof, to any Person or Persons whatsoever, either in Fee-simple or Fee-tail, or for Life or Lives, or for any Term or Number of Years, absolute or determinable upon the Death of any one or more Person or Persons; and by the same Deed or Deeds, Writing or Writings, or last Will and Testament, at the like Will and Pleasure of the said *W. H.* to charge the said Premisses, or any Part thereof, with the Payment of any Sum or Sums of Money in Gross, or with any particular Sum or Sums, to be paid at such Days and Times, and in such Manner and Form, as the said *W.* shall in and by such Deed or Deeds, Writing or Writings,

or last Will direct and limit, either with or without a Power of revoking any such Use or Uses, Estate or Estates, or any other Appointment hereby to be reserved, to be made, and of appointing any new or other Use or Uses, Estate or Estates, of and in the said Premisses, or otherwise of charging the same, or any Part thereof, after such Revocation made, with the Payment of any annual Sum, or other Sum or Sums of Money, as she the said *W. H.* shall in her Discretion think fit.

In Witness, &c.

THE
LAW and PRACTICE
OF
Fines and Recoveries,
In ENGLISH.

PART II.
Containing the LAW and PRACTICE
of RECOVERIES.

THE LAW

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THE
LAW and PRACTICE
OF
RECOVERIES.

*Of the Nature of common
RECOVERIES in general,
and the various Methods
of suing them forth.*

A Common Recovery (as here intended) is a *Fictio Juris* Conveyance by Consent, used for the better Assurance of Lands upon any Man, wherein the Recovery in Value, the supposed Recompence to him who loseth the Land, is but a Fiction in Law; and this Recovery by Consent is now become a Common Assurance, upon which Uses may be limited and raised. *1 Co. Rep. 15. b.*

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A Recovery is much in the Nature of a Fine, 9 Co. 127. 3 Co. 80. though better, in regard it bars Remainders and Reversions, and all Leases and Incumbrances derived out of Remainders and Reversions; so that a Person may sell, give, or bequeath the Estate in Fee, or in what Manner he pleases. 1 Rep. 62, 63. 3 Rep. 61. 6 Rep. 42. For the Recompence adjudged over, shall go in Satisfaction of the Estate or Land lost by the Recovery. *Dock. and Stud. Dial. 1. ch. 26.* And as it would not be reasonable to allow the Heir, &c. to have the Land and the Recompence in Value, therefore he loseth the Land, and must trust to the Recompence. This supposed Recompence is the Reason why a Common Recovery is a Bar to all who are in the Remainder or Reversion, as well as to the Issues in Tail; whereas a Fine bars only the Heirs in Tail, but not those in Remainder or Reversion, except upon Default of Non-claim in due Time.

A Tenant in Tail cannot be restrained by Condition, &c. from suffering a Recovery. 2 Rep. 74. 10 Rep. 38, 42. 1 Inst. 224. a.

A Common Recovery is the best Assurance (except an Act of Parliament) that Purchasers can have for their Money.

These Recoveries are much favoured by the Law, many of the Inheritances of the Kingdom depending upon these Assurances. 5 Rep. 40.

Therefore the Judges will not suffer them to be impeached. *Wood's Inst. 249.* Why these Recoveries are respected as Common Assurances, see 2 Lev. 29, 55. Further, a Recovery is a formal, feigned Suit, and Judgment upon a real

real Action, brought in the Common Pleas Court against another that is seised of the Freehold, to cut off and destroy Estates-tail, Remainders and Reversions, and bar the former Owners thereof. 1 *Inst.* 154. For it cuts off all Restraint, and defeats the Limitation to Heirs Lineal only, created by the Statute *de donis Cond.* that without this Recovery a Man could not alien his Lands, nor mortgage them, though the utmost Necessity and Emergency of himself and his Family required it. This is the Force, Effect, and End of Common Recoveries. *West's Symb. Tit. Recov.* 2 *Salk.* 570.

It is called a *Common Recovery*, because it is a common Path to that End for which it was ordained, *viz.* To cut off Estates-tail, &c. and it is by Custom become a Common Assurance of Lands: It is called a *feigned Recovery* by 21 *H. 8. cap.* 16. and 34 & 35 *Hen. 8. cap.* 20. *Communis Error facit jus. Semper in fictione Juris subsistit Equitas.* 10 *Rep.* 40. 11 *Rep.* 51. 1 *Inst.* 150. a. *Fictio Juris inique Operatur alieni damnum vel injuriam.* 3 *Rep.* 36.

A Common Recovery, as Sir *Matthew Hale* says, was handsomely invented for Tenant in Tail to be Owner of his Estate. *Benson and Hudson's Case*, 25 & 26 *Car. 2. Rot.* 696. in *K. B.*

These common feigned Recoveries, as also feigned Fines, are said to have been first invented when Intails grew to be inconvenient. See *Stat. de Don. Cond. West. 2. c. 1.* Because an Estate in Tail might last for ever; some have said this sort of Recovery was introduced in the Time of King *Hen. 8.* But it is evident they were in use much earlier, and are now become
establisn'd

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establiſh'd by Uſage and Cuſtom ; for feigned Recoveries came in Practice *Temp. Ed. 4.*

Theſe Recoveries were framed by the Wiſdom and Policy of the Law, whereby, though there be a Judgment of the Court, yet it is in an amicable Manner, and not an adverſary one, for it is by Conſent and Permiſſion of the Parties, by Reaſon whereof, it is generally ſaid a Recovery is ſuffered; and tho' this Judgment is fictitious, as to any actual Litigation upon which it was obtained, yet it is given on a real Writ brought, and is a Judgment, according to the ſtrict Rules of the Common Law.

As to Eſtates-tail, we find there was no ſuch Eſtates created by Common Law, for all Inheritances were originally Fees-ſimple; for the Fee-tail of this Day was called *Fee-ſimple conditional*; and after Iſſue had, which was the Condition to be performed, the Donee gained an abſolute Fee-ſimple, for three Purpoſes: *First*, To alien. *Co. Litt. 19. a. 2 Inſt. 334.* *Secondly*, To forfeit. *Thirdly*, To charge the Land with a Rent-Charge. So continued the Law till the 13th of *Ed. 1. cap. 1. de Don. Cond.* and it being then a Time that the Nation was divided, and ſhaken by intestine Wars, begun between the King's Predeceſſor and the Barons, (commonly called the *Barons War*) and conſequently many Forfeitures of Eſtates enſued, the Great Men then obtained the *Stat. de Don. Cond.* to preſerve their Eſtates, if ſuch future Civil Wars ſhould break out.

Now the *Stat. de Don. Cond.* only mentions, that the Tenant in-Tail ſhould not have Power to alien; ſo if he could not alien, he could not forfeit; but as before that *Stat.* he might alien,
after

after Issue raised to the Family, *post Prolem suscitatum*, so the Judges construed the Act, so that he might forfeit, 5 *Ed.* 3. c. 14. For Forfeiture and Alienation always went Hand in Hand, 1 *Co. Inst.* 175. And from the making that *Stat.* it has remained a settled and accepted Opinion, that Tenant in Tail could not alien, and consequently could not forfeit, until the 12 *Ed.* 4. where Recoveries came in by which the Estate-tail may be dock'd, &c.

After this *Stat.* by another of 4 *H.* 7. cap. 24. Tenant in Tail might bar his Issue by a Fine suffered with Proclamations; but all this while it was the current Opinion during the whole Reign of *H.* 7. that such Lands could not be forfeited for Treason. Till the Time of *H.* 8. who having Issue, these Doubts and Opinions, concerning the *Stat.* of *H.* 7. were removed; and by *Stat.* 26 *H.* 8. it is enacted, That in Case of Treason intailed Lands are forfeited.

For before the *Stat. de Don. Cond. Westm.* 2 Ca. 1. Feoffees in Fee-simple Conditional, after they had Issue, had Power to disinherit the Issue, and alien contrary to the Will and Intent of the Donors; and by this *Stat.* in *Edward* the First's Time, viz. 13 *Ed.* 1. the Inheritance was made so strong, that the Tenants in Tail could not set off, sell, or convey away the Land from the Heir, by any Act, Deed, Attainder or Charge, or incumber it any longer than for his sole Life only. Of *Estate-tail*, and *Common Recoveries*, see the Case of *Brown* against *White*, 2 *Mod.* 131. Hence arose these Inconveniencies: 1st, That the Land was so secured to the Heir, as that the Father could not put it from him. Hence the Son oftentimes

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times proved disobedient, negligent, and wasteful, &c. because he knew he could not be disinherited.

Again, such as had intailed Lands had little or no Profit from them, for few or none would give a Fine, or advance Money on exigent Occasions, on such a precarious Estate as that of the Owner's Life only; nor, for the same Reason, would they improve the Land, with many more Inconveniences; to remedy which, several later *Stat.* were made, viz. 4 *H.* 7. 24. 32 *H.* 8. 36. whereby a Tenant in Tail forfeits his Land for Treason.

And by 32 *H.* 8. he may make Leases for twenty-one Years, or three Lives; and by 33 *H.* 8. intail'd Lands are liable by Extent for the King's Debt; and 13 *Eliz.* 4. they are saleable for his Arrearages, upon his Account for his Office. Hence Men began to cut off Intails by such Ways and Means as they could find Law for; and now by Use, these Recoveries are become Common Assurances, against Intails grounded on strict Principles of Law; for a Fine bars the Heir in Tail, but not Remainders or Reversions, &c. But these Recoveries bar them all. 1 *Co. Inst.* 22, 62.

Upon a Common Recovery, an Use may be averred as well as on a Fine.

The Reason why a Common Recovery is a Bar in Law.

THE Reason why Recoveries are Bars is, because, in the Case of *Hudson and Benson* by *Hale*, the Recompence in Value is the Reason of the Bar, but not the Reason of the Bar as precisely to him in Reversion or Remainder; but because the Recoveror is in of the Estate-tail, and he had, in Judgment of Law, a Continuance still; for as at Common Law the Donee, after Issue, might, if he pleased, have aliened the Land, and barred the Donor: And a Common Recovery is a Conveyance, excepted out of the *Stat. de Don.* and the Recoveror is in of the Estate that the Vouchee had; but the Issue in Tail is barred of his Claim, in respect of the supposed Recompence, and the Estate-tail having, in Judgment of Law, Continuance nothing in Reversion or Remainder may take Place. See *Capell's Case*, 2 *Lev.* 27.

Vouchers.

A *Vocando*, the Vouchee is he whom the Tenant and Defendant voucheth or calleth to Warranty of the Land in Demand, and is either to defend the Right against the Demandant, or yield other Lands to the Value, &c. and it extends to Lands or Tenements of Freehold or Inheritance, and not to any Chattel real, personal or mix'd; the Process, whereby
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the Vouchee is called, is a *Summoneas ad Warrantizandum*; on which Writ, if the Party had nothing whereby he may be summoned, then another Writ must be obtained, called *Sequatur sub suo periculo*. Co. Litt. 101.

A Vouchee, by entering into Warranty, becomes Tenant in Law of the Lands; when the Demandant counts against him, he may plead a Release. *Jenk. 41 Cent. 100*. In the Writ of Entry, within the Degrees, none shall vouch out of the Line; and in Writs of Right and Possession, it is a good Counter-plea, that neither the Vouchee nor his Ancestors had ever Seisin of the Land. *Stat. 3 Ed. 1. cap. 10*. And the Demandant may aver a Vouchee to be dead, and that there is no such Person, where the Tenant vouches a Person deceased to Warranty. *14 Ed. 3. cap. 18*.

The Chancery has decreed to what Uses a Common Recovery of Lands shall operate, on its being uncertain by the Deeds and Conveyances of the Land. *1 Chan. Rep. 98*.

A Common Recovery suffered, or Fine levied by *Cestui que Trust*, of an Estate-tail, has the same Effect in Equity to bar the Intail and Remainders, as it would have at Law, in Case a legal Estate was in him. *1 Vern. Rep. 440*.

2. Tenants in Tail may suffer a Recovery, and be good; but Tenant in Tail, after Possibility of Issue extinct, Tenants by the Courtesy, or for Life, suffering a Recovery by Fraud, to the Prejudice of him in Remainder or Reversion, such Recoveries are not only void, but are Forfeitures of the Estates of such Tenants; but if the next in Remainder joins, or vouch-

th over the common Vouchee, it will be a good Recovery. *Shep. Touch. 43.*

3. A Recovery, in a large Signification, is a Restitution by solemn Judgment to a former Right. *2 Inst. 75, 429.* And Judgments, whether obtained after a real Defence made by the Tenant to the Writ, or whether pronounced on his Default, or feint Plea, had the same Efficacy and Force to bind the Right of the Land in Question.

A true Recovery is an actual or real Recovery of any Thing, or the Value thereof by Judgment; as if a Man buy Land of another with Warranty, and this Land is afterwards recovered by a third Person, the Buyer has Remedy against the Seller to recover it in Value; that is, to recover so much Money as the Land is worth. *F. N. B. fol. 134.*

This was the Nature of the Common Law, and from hence Men took an Opportunity of making use of the Decisions of the Court to their own Advantage, and to the Prejudice of others; who, though in some Cases Strangers to the Action, yet were interested in the Land for which it was brought.

For whilst these Recoveries were governed and directed by the strict Rules of the Common Law, particular Tenants, as Tenant in Dower, Courtesy, Tenant in Tail, after Possibility of Issue extinct, and for Life only; also those who had made Leases for Years, and those whose Wives were entitled to Dower, often took Advantage of them; and by selling the Lands, and suffering their Purchasers to recover them, thereby defeated the Right of those in Remainder and Reversion, &c.

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Which were so great Inconveniencies, that it was thought absolutely necessary to provide against them by Statutes. See *Co. Litt.* 104. *Kel.* 109. 2 *Inst.* 321. *Bro.* 69. *F. N. B.* 468. *Plowd.* 57.

But the Statute of *Westm. 2. cap. 3.* which makes Provision for him in Reversion against the Recoveries suffered by Tenants in Dower, Courtesy, or in Tail, after Possibility of Issue extinct; or for Life; and by the fourth Chapter of this Statute, the Wife is secured as to her Dower; and the *Stat. of Gloucester, Car. 2. cap. 7.* and 21 *H. 8.* have established the Right of Termors, and enabled them to falsify such Recoveries. See *Doct. and Stud.* 45.

Common Recoveries were no sooner allowed by the Judges, but Men began to improve them into a common Conveyance, and to declare Uses on them as on Fines and Feoffments; but the 11 of *H. 7. cap. 20.* declares all Recoveries, and other Alienations of a Woman seised in Tail, or for Life, jointly with her Husband or solely, of Lands accrued by the Husband, or on his Account, to be void; and the Person, to whom the Right, after her Decease without Issue, did appertain, might enter in her Life, after such Alienation.

But a Common Recovery suffered by a Feme Covert, where her Husband joins with her, is good to bar her and her Heirs of Lands she hath in her own Right, because the *Præcipe* in the Recovery answers the Writ of Covenant in the Fine to bring her into Court, where the Examination of the Judges destroys the Presumption of the Law, that this is done by the

Coercion

Coercion of her Husband, for then 'tis presumed they would have refused her. 2 Roll's Abr. 395.

Recoveries are compared to Judgments in other real Actions or adversary Suits.

A Recovery suffer'd by Baron and Feme of the Land of the Wife, is as strong to bind the Right of the Feme Covert by the Custom of London, as a Fine at Common Law. *Vid.* there such Custom as to *Wales*.

Recoveries are either with single, double, treble, or quadruple Vouchers: The Recovery with single Voucher, which is called a 'single Recovery, is used to bar the Tenant in Tail, and his Heirs, of such Estate-tail which is in his Possession, with the Remainders depending upon it, and the Reversion expectant thereon which others have, and of all Leases and Incumbrances derived out of such Remainder or Reversion.

The Recovery with double Voucher is to bar the first Voucher, and his Heirs, of every Estate at any Time in him, or any of his Ancestors, whose Heir he is of such Estate, and all others of Right to Remainders or Reversions dependant and expectant on the same, and all Leases and Incumbrances derived out of them; also it will be a Bar of the Estate whereof the Tenant was then seised in Reversion or Remainder, &c.

The Recovery with treble Voucher is to make a perpetual Bar of the Estate of the Tenant, and of every such Estate of Inheritance that at any Time had been in the first or second Voucher, or their Ancestors, whose Heirs they are, and as well of every Reversion there-

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on depending, as of all Leases, Estates, Charges, and Incumbrances.

In suing forth common or feigned Recoveries, observe the four Things following, and also that there must be three Persons at least.

1. The Demandant, who is Plaintiff in the Writ of Entry, and properly called the Recoveror, who brings the Writ of Entry *sur Disseisin*.

2. The Tenant of the Land, who is Defendant to the Writ of Entry, against whom the Land is to be recovered, and therefore properly called the Recoveree; he must be perfect Tenant of the Freehold.

3. The Vouchee, who is the Person the Tenant vouches, *a vocando*, or calls to Warranty, in the Lands demanded, either to defend the Right, or to yield him other Lands in Value, according to a supposed Agreement.

4. The Land itself which is to be recovered, and Parcels thereof, must be carefully and regularly placed.

Now the Uses both of Fines and Recoveries are mostly expressed and led by Indenture between the Parties, designed before or after for that Purpose, which be called *Indentures to lead the Uses of Fines and Recoveries*.

For upon Feoffments, Fines and Recoveries, the Estate of the Lands doth settle, as the Use and Intent of the Parties is declared by Writing before or after the Act done; as for Example; if they make a Writing that one of them shall levy a Fine, or make a Feoffment, or suffer a Recovery to the other, yet the Use and Intent may be is, that one shall hold it for his Life, and after his Death a Stranger to have it

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in Tail, and then a third in Fee-simple, as has before appeared in the Precedents. In this Case the Land vesteth in Estate, according to the Use and Intent declared, and that by reason of the *Stat.* of 27 H. 8. cap. 10. which conveyeth the Land in Possession to every one that hath Interest in Use, or the Intent of the Fine, Feoffment or Recovery, according to the Use or Intent of the Parties; but before that *Stat.* the Feoffees, &c. were Owners of the Land; but now the *Cestui que Use* (he to whose Use they were enfeoffed) is the Owner of the same, before the Possession ruled the Use, but since the Use governeth the Possession. *Noy's Max.* 60.

How the Writ must be brought.

IF a Recovery be intended with single Voucher, the *Præcipe* must be brought against the Tenant in Tail in Possession, and he to vouch the common Vouchee; but if your Recovery be intended with double Voucher, you must, either by Fine, Feoffment, Bargain and Sale inrolled, or Lease and Release, make him (you intend to be) Tenant at the Time of the Writ of Entry brought, (for every Writ of Entry must always be brought against him that must be a perfect Tenant of the Freehold of the Land demanded at the Return of the Writ, 18 R. 2. and *Dyer, fol. 252.* because the Estate of the Tenant in Tail (who is the first Vouchee) is barred, in respect of the supposed Recompence adjudged over against the common Vouchee; for in strict Law, the Recompence adjudg'd over is to go in Succession of the Estate, as the

Land lost should have done; and then it were not Reason to allow the Heir Liberty to keep the Land, and also to have a Recompence in Value; therefore he loseth the Land, and is to trust to the Recompence, as aforesaid. *Dyer* 252. *1 Co. Inst.* 42. *3 Co. Rep.* 6. But yet in this feigned Recovery, the Recompence is but imaginary, and no such Thing really in the Case.

Note also, That if a Tenant have but an Estate for Life, or be Tenant in Dower, or by the Courtesy of *England*, it is requisite, for the strengthening of a Recovery, and saving his Estate, that he make a conditional Surrender of his Estate to him in the Reversion or Remainder, to the End he may be a present Tenant of the Inheritance, and then to bring the Writ of Entry against him; and after that Recovery is executed, the particular Tenant, for Breach of the Condition, may enter and enjoy his Term, notwithstanding such Surrender.

Now to suffer a Common Recovery, the Tenant of the Freehold agrees with the Demandant, (some Friend) that he shall bring his Action real against him, (which is but a colourable Suit,) as though the Demandant had a good Right and Title to the Land, and the Tenant no Right of Entry to the same, but after a Disseisin, which a Stranger had unjustly made, whereas indeed the Demandant never had Possession of it, nor the Stranger. *Doff. and Stud. Dial.* 1. *cap.* 26.

This Tenant appearing to the Writ, (the Form of which I shall set forth afterwards) he vouches or calls to Warranty *A. B.* perhaps the Crier of the Court, or the Bag-bearer to the *Custos Brevium*, who is called the common Vouchee,

chee, and is supposed to warrant the Title; then this Vouchee shall appear in Court, as tho' he would defend his Right and Title, and the Demandant shall declare against him, and thereon he prays a Day to make his Defence; and after the Day granted by the Court, he makes Default in not appearing, whereon the Plaintiff or Demandant shall have Judgment, to recover the Land, against the Defendant or Tenant in Tail, and he to recover in Value against the common Vouchee.

Note; The common Vouchee does not pray a Day, but a general Imparlance, without any Time fixed, by which he obliges himself to continue in Court till the Plea be farther adjourned. *Telv. 211.*

And note, That Recoveries may be suffered either at Bar or by *Dedimus potestatem*, and Warrant of Attorney, or by Commission out of Chancery. The Method and Manner, with the proper Fees, shall be regularly set down; and as Fines, so may Recoveries be suffered and passed in the Counties Palatine, &c. and in *Ely.*

And further, this Recompence in Value, which goes only to them who vouch and have Loss, *Plowd. Com. 514.* is only imaginary, because the common Vouchee has no Lands to render in Value; yet it is taken for a Bar of the Tail forever, and is justified to be good in Conscience as well as Law. Notwithstanding the *Stat. of West. 2. cap. 1. 10 Rep. 37, 38, 39, 40. 1 Inst. 224.* wherein it is provided, that the Will of the Giver shall be henceforth observed, and this whether the Recovery be upon good Title or not.

And it is said, that a Common Recovery is not contrary to that Act, nor to the Intent of the Donor. See the 7 H. 8. cap. 4.

Observe; To every Recovery there must be a good Tenant to the *Præcipe*, or it will be void. *And note further;* All such Persons, and by such Names, may be Demandants, Tenants, and Vouches in Recoveries, as may be Conufors and Conusees in Fines. *Co. Lit.* 372. *Westm.* 1. *Sett.* 1. 34 & 35 H. 8. cap. 20. 14 Eliz. cap. 28.

Common Recoveries, how and where they may be passed.

COMMON or feigned Recoveries are suffered in the Common Pleas by the Tenants and Vouchers personally in Court, or you may pass it by Warrant of Attorney; which Warrant of Attorney may be taken by any of the Judges in either Bench, Barons of the Exchequer, or Serjeants at Law in their Circuits, without a *Dedimus*, or by Commissioners in the Country, where you must proceed, as in the Fine, by *Dedimus*.

Recoveries may be suffered at the Assizes and Great Sessions in *Wales*, and in the Counties Palatine of *Chester*, *Lancaster*, and *Durham*. 34 & 35 H. 8. cap. 16. 27 of *Eliz.* cap. 9. Also in the Court of Hustings of the City of *London*. *Priv. Lond.* 90.

And in a Court Baron by Custom. *Kitch.* 176.

The Writ of *Dedimus potestatem*, as here intended and used, commissionates private Persons

sons to do some Act appertaining to a Judge, and is usually granted upon Suggestion, that the Party is so feeble that he cannot bear the Fatigue of travelling to come before the Judge. It is used in many Cases, as to make a personal Answer to a Bill in Chancery, to levy a Fine, &c. And a Writ of *Dedimus potestatem* is granted to receive an Attorney for him who is Vouchee in a Recovery, as he is received for the Default of Tenant for Life, &c.

And this *Dedimus* impowers the Commissioners therein named to take the Acknowledgment of a Warrant of Attorney, which the Tenant executes, to empower two Attornies, or one of them, to appear for him at the Return of the Writ of Entry.

Common Recoveries are founded upon Writs of Entry, &c. and the *Præcipe quod reddat*, &c. are the Mandatory Words of the Writ of Entry, which is the first and leading Process to sue forth Common Recoveries, the several Forms of which we shall insert hereafter.

N. B. That a Writ of Entry in *le post* is so called, in Contradistinction to three other, which are in the *Quibus, Per & Cui*.

Entry in the Quibus.

A Writ of Entry in the *Quibus* is a Writ of Entry in the Nature of an Assize, against the Tenant who made the Disseisin to the Demandant himself.

Per, Cui & Post.

A Writ of Entry in the *Per, Cui & Post*, is thus to be understood :

A Writ of Entry in the *Per* is when he against whom it is brought claims immediately under the first Party, *i. e.* as Heir to him, or by his Alienation ; and it is called in the *Per* only from its running in this Form: *Command A. that he render to B. a Messuage, of which A. hath disseised B. unjustly, and without a Judgment, and wherein the said A. hath not Entry, but By C. who demised to him. So that the Words (by the Disseisin) constitute that Term of Art of calling it a Writ in the Per.*

And in the *Per* and *Cui* it is thus: *In which the said A. hath no Entry but by C. to whom T. demised it, who unjustly made the Disseisin. So that the Words (by C. to whom T. demised) constitute this Term of Art, in calling it a Writ of Entry in the Per and the Cui.*

Now a Writ of Entry on a Disseisin *in le Post* runs thus: *Wherein the said A. hath no Entry but after a Disseisin, which D. unjustly made to the said B. So that the Tenant in the Post here claims not by C. who demised it to him, nor by C. to whom D. demised it to him, but is supposed to come in after a Disseisin made by D. And these Words (after the Disseisin) constitute that Term of Art of calling it a Writ of Entry upon a Disseisin in le Post,*

*Of what Things a Writ of Entry
will lie, and what not.*

OF an Acre of Land.

Of an Acre of Land cover'd with Water.

12 H. 7. 1, 4.

Of a Water Pit. 12 Ed. 3. 14 Ed. 3. 842.

F. N. B. fol. 191.

Of a Passage over the Water.

Of a Bailiwick. F. N. B. 191. 34 Ed. 3. 423.

Of an Office. 27 H. 8. 12.

Of an Advowson of a Church, or of the fourth
Part of the Tithes. 34 Ed. 3.

Of a Portion or Part of Tithes. Dyer, fol. 84.

pl. 83.

Of a certain Parcel of Land. Dyer 84. pl. 83.

Of the Wardship of Land, and of the Heir,
or of the Heir of the Land only. Reg. 161.

22 Ed. 3. fol. 29.

Of all Manner of Ecclesiastical or Spiritual
Profits, as of Vicarages, Portions, Pensions,
Tithes, &c. Stat. 32 H. 8. cap. 7.

Of all and all Manner of great and small
Tithes within the Vill or Hamlet of B. in the
Parish of A. howsoever growing, happening,
and yearly renewing within the Vill or Hamlet
of B. in the Parish of A. Thel. lib. 8. cap. 9.

Of the fourth Part of Tithes and Oblations of
the Parish of St. Peter, &c. 16 Ed. 3.

Of a certain Portion of Tithes or Land, not
shewing how much. 1 H. 4. fol. 1. Dyer, fol.
84. pl. 83, 84, 85 & 86.

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In ancient Times of a Hide-Land or Plough-Land. 4 *Ed.* 3. 161.

Of an Ox-land or Ox-gang. 6 *Ed.* 3. 291.

Of six Foot of Land in Length, and four in Breadth. 14 *Aff.* 13.

Of a Toft or Site of a Mill. 14 *Ed.* 3.

Of a Steeding for six Sheep. 3 *Ed.* 3. 23.
4 *Ed.* 2.

Of a Rood of Lands. 3 *Ed.* 5.

Of an Advowson. 34 *Ed.* 1.

Of a Moiety of a Rood of Land. 41 *Ed.* 3.

Of a Shop. *Reg.* fol. 3.

Of four Acres of Elder-wood. 11 *Aff.* 13.

Of a Ditch, not of a Pool, nor of a Fishery.
8 *Ed.* 3. 381.

Of an Advowson of Tithes of a *Wann* of Land.
Reg. fol. 29.

Of a Common of Pasture. 27 *H.* 8. fol. 12.

Of Estovers. 2 *Ed.* 3.

Of what Things a Writ of Entry lieth not.

A Writ of Entry lieth not of
An Ox-land or Ox-gang of Marsh Ground.
13 *Ed.* 3. fol. 3.

Nor of Homage and Fealty, nor of Services
to be done. 6 *Ed.* 2.

Nor of a Selion or Ridge of Land, for the
Uncertainty, because a Selion, which is a Quan-
tity of Land sometimes containing an Acre,
sometimes more, sometimes less.

Nor of a Garden, Cottage or Croft. 14 *Aff.*
13. 8 *H.* 8. 22 *Ed.* 4. 13.

Nor

Nor of a Rod of Land. 13 Ed. 3.

Nor of a Quarry, a Mine or Market, 13 Ed. 3. for they are not in Demesne, but Profit only.

Nor of an upper Chamber. 3 H. 6. fol. 1.

Nor of an Annuity or Tenement, but it must be of House and a certain Quantity of Acres. Moor 959.

The Manner how the Parcels ought to be placed.

FIRST, Things of more Worth and highest Dignity, are placed before Things that are less; so as a Castle before a Manor, a Manor before a Messuage, and a Messuage before a Toft or Mill.

And Things more Universal and General before Particulars; that is, the General before the Special; as Land, which is the Genus, before Meadow or Pasture, which is the Species included under the general Appellation.

Integral or whole Things before the Parts, as a Messuage before a Moiety of a Messuage, an Advowson before a Moiety of the same, &c.

Of placing the Parcels.

G. C. demands of R. M. the Manors of B. and E. with the Appurtenances, and two Messuages, one Shop, one Toft, one Mill, one Dove-house, three Gardens, fifteen Acres of Land, eleven Acres of Meadow, four Acres of Pasture, seven Acres of Wood, seventy-four Acres

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Acres of Furze and Heath, eighty Acres of Moor, eight Acres of Marsh, twelve Acres of Elder-Wood, nine Acres of Rushy Ground, four Acres of Land cover'd with Water, a Rent of 15 *l.* 3 *s.* 2 *d.* and a Rent of a Pair of Spurs; twelve Capons, four Cocks, four Hens, six Pounds of Pepper, Common of Pasturage for all Manner of Cattle, View of Frank-pledge, a free Warren, a free Fishery, a Liberty of Foldage, and Fairs and Markets, Toll, Stallage and Pica-ge, Goods and Chattels of Felons, Fugitives, Outlaws, and of Persons put in Exigent, Deodands, Chattels of Waifs and Estrays, with the Appurtenances, in *G. L. 7. M. and F.* Also the Rectories of *H. and U.* with the Appurtenances, and all and all Manner of Tithes belonging and appertaining thereto; and also the Advowsons of the Churches of *O. and D.* and the Advowson, the Vicarage of *K.* and in which, &c.

Many more Particulars are to be put in the Writ, for which see the *Register of Original Writs*, fol. 1, 2. *West's Symb.* 2. p. 77. and the Manner they are to be placed is thus tabulated.

The Honour of *A.* with the Appurtenances.

The Castle of *B.* with the Appurtenances.

The Borough of *C.* with the Appurtenances.

The Forest of *F.* with the Appurtenances.

The Chase of *G.* with the Appurtenances.

The Hundred of *D.* with the Appurtenances.

The Manor of *O.* with the Appurtenances.

The Site of *M.* with the Appurtenances.

The Site of the late Monastery of *B.* with the Appurtenances.

A Messuage.

A Shop.

A Cel-

- A Cellar.
- A Toft.
- A Mill.
- A Dove-house.
- A Garden.
- Land.
- Meadow.
- Pasture.
- Wood.
- Furze and Heath.
- Moor.
- Ground wherein Rushes grow, or Rushy
Ground.
- Marsh-Land.
- Elder-Wood.
- Land cover'd with Water.
- A Rent of ten Shillings.
- A Rent of two Capons, two Hens, and one
Pound of Pepper-corn.
- A Common of Pasture for all Manner of
Cattle.
- A free Fishery.
- A free Warren.
- Liberty of Foldage.
- A Salt-Pit.
- A Boilery of Salt Water.
- A Passage over the River *Ex.*
- A Wharf.
- A Quarry.
- A Fair and Market, with the Appurtenances.
- View of Frank-pledge, with the Appurte-
nances.
- Chattels of Felons, Outlaws, and Persons put
in Exigents.
- Chattels of Waifs, Estrays and Deodands.
- The Rectory of *B.* with the Appurtenances.

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And all and all Manner of Tithes whatsoever belonging and appertaining to the said Rectory.

The Advowson of the Church of *L.*

The Advowson of the Vicarage of the Church of *M.*

The Moiety of a Messuage.

Note: Where a Common Recovery is suffered of Land in *D.* and the Liberties thereof, it shall pass Lands lying in another Vill within the same Liberty, though such other Vill will not be expressly named. 1 *Mod.* 206. 2 *Mod.* 47, 48, 49.

Furthermore, Where there is a Parish and a Vill within the Parish of the same Name, and a Recovery is suffered of Lands in the Vill, without naming the Parish, but the Parish is named in the Indenture to lead the Uses, they make but one Conveyance, and the Lands in the Parish pass, as well as those in the Vill. 2 *Mod.* 233, 234. 1 *Mod.* 250, 251, &c.

In the next Place, Where the Uses of a Fine or Common Recovery have been declared by a former Deed, were afterwards changed by a subsequent one, which controlled the former. See 2 *Mod.* 261, 262, &c. and the Case of *Jones* against *Morley*, 6 *W. & M.* in *K. B. Parliam. Cases* 140, 146.

Instructions for suing forth Recoveries.

IN suffering Recoveries, the Parties, to wit, the Tenants and Vouchees, do most usually appear in open Court; but if they cannot personally appear, you must pass it by Warrant of Attorney, as aforesaid; which Warrant of Attorney may be taken by any of the Judges of either Bench, Barons of the Exchequer, or Sergeants at Law in their Circuits, without a *Dedimus potestatem*, or by Commissioners with a *Dedimus*, as you proceed in a Fine before them; of which in Order.

To sue forth a Recovery at the Bar of the Common Pleas: First, draw your *Præcipe* for the Writ of Entry from the Deed, as to the Parcels, naming the Demandants, Tenants, the Manors, Messuages, Quantities of Land, and of what Nature, and how many Acres, and in what Place or Places they are situated.

The *Præcipe* may be drawn on Parchment or Paper, which you may carry to the Curfitor of the County where the Lands lie, for a Writ of Entry, though it is the usual Practice to pass a Recovery at Bar, before the Writ of Entry is sued out; and then you may get your Writ of Entry compounded at the Alienation-Office, and get the Attorney General's Hand to it, for which you must pay 10 s.

This may be done before Sealing or after, as you may pass your Recovery at the Bar before the Writ of Entry is sued out; therefore having
your

your *Præcipe* drawn as before, you carry it, for Dispatch-sake, to a Serjeant's Clerk, or a Serjeant himself at the Bar; and the Tenant being present, for the Demandant need not be present, the Count in the Recovery and Voucher to Warranty, and Prayer in the Imparlance, are repeated by one of the Serjeants at the Bar, who sets his Name to it, and then the Prothonotary marks it at the Bar on the Margin of the *Præcipe*.

Note; If your Client be a Nobleman, you must place him in the Middle of the Bar, between the King's Serjeants, or the two other eldest Serjeants in their Absence.

And if the Recovery be with single Voucher, three Serjeants plead it; one for the Demandant, one for the Tenant, and one for the Vouchee.

If with a double Voucher, four Serjeants.

If with a treble Voucher, then five Serjeants.

Every Serjeant's Fee being 3 s. 4 d. out of which each Serjeant allows his Clerk that sueth out the Recovery 1 s. 4 d. so that you pay them only 2 s. a-piece.

The *Præcipe* being thus passed at the Bar, you give it to one of the Cryers, and he carries it to the Prothonotary's Secondary, in whose Office you intend your Proceedings shall be enter'd, and the Secondary enters the *Præcipe* in a Book for that Purpose, and you pay him 4 s. 6 d. and it is usual to give the Cryer 6 d. for getting the *Præcipe* enter'd, and he marks it thus: *At the Bar*. This being done, the Cryer returns it you again.

When at the Bar, one of the Serjeants will ask you which is the Tenant, and cause him

to stand up, as also the Vouchees, with Intent that they may be shewn to the Court; then the Judge will ask *Who knows the Parties?* which you or some others must answer, *You know them to be such Parties*; else others might come, either in Men's or Women's Names, and suffer a Recovery of their Lands, to the Loss of their Lands; as where the Husband brought in another Woman, a Stranger, saying, *She was his Wife*, and suffer'd a Recovery of his Wife's Lands, to cut off her Estate without her Consent; though it is not necessary to examine a Feme Covert when she joins with her Husband in passing a Recovery, yet it is held prudential Practice. *Reg. Brev.* 134, 295.

After the Tenant or Tenants, with the Vouchees, have had their Appearance recorded, then you see the Serjeants, as before, and the other Fees paid in Court, a Table of which shall be inserted.

The Serjeant's Clerk, to whom the *Præcipe* is given, has 6 s. if it be with a single Vouchee; 8 s. if it be with a double one; 10 s. with a treble Voucher; and 12 s. with a quadruple Voucher; and if it be by Warrant of Attorney, then you pay 4 s. and 2 s. more to the Secondary.

The *Præcipe* being passed the Bar, you leave a Copy thereof with the Cursitor for a Writ of Entry, which he makes out for you. [The Forms of *Præcipes* and *Writs of Entry* see afterwards.]

Then you must compound it at the Alienation-Office, and get the Attorney General's Hand to it, for which you pay 10 s. as before, before or after sealing; after it is sealed, you

carry it to the Clerk of the Inrollments in Mr. Forret's Office in the *King's-Bench-Walks* in the *Temple*, to be enter'd and return'd, as is done in a Writ of Covenant.

Then draw your Entry of the Proceedings on the Plea-Roll of that Term, which the Prothonotary will give you, and you must enter the Award of the Summons, if your Recovery be of the same Term; that is, if the Writs of Entry and Summons be of the same Term, you must enter the *Mittimus* and Transcript in the Manner afterwards set down; which Transcript the Judge signs; this remains with the Clerk of the Fines.

But if your Writ of Summons is returnable of another Term, then the Writ of Entry and the Award of the Summons must be upon a Roll of the Term the Writ of Entry is returnable, and the Writ of Summons of another Term; as for Example, if your Recovery be suffered in *Hillary* Term, and there cannot be five Returns between the Return of the Writ of Entry, and the Return of the Writ of Summons, because *Hillary* Term has but four Returns; therefore the Award of the Summons must be upon a Roll of *Michaelmas* Term, and the Entry of the *Mittimus* and Transcript, with the Recovery, on a Roll of *Hillary* Term.

The Method of suing out a Recovery by Dedimus potestatem, for Warrants of Attorney, and at Bar; being some Additions and Observations to what has been before laid down in suing a Recovery at Bar, and when the Tenant and Vouchees appear not.

THE Recovery may be passed, and had by Warrant of Attorney; *First*, By any of the Judges of Assize of either Bench, Barons of the Exchequer, and, some say, by Serjeants at Law in their Circuits, without a *Dedimus*.

Secondly, By a *Dedimus* directed to Commissioners in the Country.

See the Forms of *Warrants of Attorney* among the *Precedents* in the latter Part.

When you acknowledge your Warrant before a Judge, it must be drawn up on Parchment; and then you must attend the Parties before a Judge, and acknowledge them, and he will underwrite the Day of the Caption, and subscribe his Name to it; or you may rather underwrite the Caption thus:

*Taken and acknowledg'd on Tuesday
the ninth Day of June in the te
Year of the Reign of his present Ma
jesty George the Second, King
Great Britain, &c. Before, &c.*

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There must also be a Transcript in Paper, to which the Judge also puts his Hand, and then it is to remain with the Clerk of the Fines; then you are to get your Writ of Entry made, and passed through the Alienation-Office, where it must be signed by the Commissioners, and enter'd into the Book; then it is to be carried to the Cursitor to be sealed, and from thence to the King's Attorney General for his Hand, for which you pay ten Shillings; then deliver it to the Prothonotary's Clerk, and he will enter it, and award the Writ of Summons, which will come in five Returns after the Teste of the Writ of Entry inclusive; for by the *Stat. 16 & 17 Car. 2. cap. 6.* there are but five Returns; and he also makes you a Copy of the Declaration which he enters in Parchment; which, together with the Writ of Summons, and the Warrant of Attorney, he will examine with the Prothonotary by the Writ of Entry and the Roll.

Now, at the Top of the Attorney General's Hand, write

Pleg. de Prof. { Tho. Doe,
Ric. Roe, &c.

Note; The *Dedimus* is procured in the same Manner as in a Fine, as to the Caption. Draw the *Præcipe* in Paper for the Cursitor to make the *Dedimus* by; and then deliver it to the Cursitor of the County, having first written the Commissioners Names thereto, one whereof to be a Knight, thus:

Devonsh.

Devonsh. ff. Command *A. C.* that he justly, &c. render to *R. M.* ten Messuages, with their Appurtenances in *Torr* which he claims, &c.

Dedimus potest' directed to { *A. B.* Knt.
C. D. Esq;
E. F. } Gent.
G. H. }

The *Dedimus potestatem* is the *Præcipe*, the Commissioners are underwrote, and you pay for it 1 l. 5 s. 8 d.

When the Tenant and Voucher do not appear in Court in Person, they may appear and suffer the Recovery by Warrant of Attorney; and if the Recovery is with a double or treble Voucher, and the Tenant appear at Bar, and the Vouchees, by Summons, you may draw the *Præcipe* on Paper or Parchment, and record the Appearance of the Tenant in Court; and then proceed by *Dedimus* to take Warrants of Attorney for the Vouchees, which may be taken before a Judge, or by special Commissioners in the Country.

And observe, If the Tenant appear by Warrant of Attorney, if either the Recovery be by a single Voucher, or the Vouchees come in Person, it needed no Summons, and may be a perfect Recovery of one Term.

Note also; That you filed your Warrants of Attorney with the Clerk of the Warrants, (see where) and all the Writs with the *Custos Bre- vium*.

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First, Draw the Warrant of Attorney in Parchment, and go with the Parties before a Judge, and acknowledge them, and he will underwrite the Day of the Caption, and subscribe his Name; then get the Writ of Entry.

Note; There must be a Transcript in Paper, to which also the Judge puts his Hand, and that is to remain with the Clerk of the Fines; then bespeak the Writ of Entry of the Curfitor, and pass it through the Alienation-Office, where it will be signed by the Commissioners, and entered in their Book; then carry it to the Curfitor to be sealed, and then to the King's Attorney General for his Hand, and deliver it to your Prothonotary's Clerk, and he will enter it, and award the Writ of Summons, which will come in five Returns after the Teste of the Writ (see 16 & 17 Car. 2.) of Entry inclusive; and he will make a Copy of the Declaration he enters in Parchment, which, together with the Writ of Summons, and the Warrant of Attorney, he will examine with the Prothonotary by the Writ of Entry and the Roll: Then he will return the Writ of Entry, and give it you fixed together with the Writ of Summons, Warrant of Attorney, and Copy of the Declaration.

Then file the Writ of Entry, and seal the Writ of Summons, and keep them safely fix'd together till the Writ of Summons is returnable; at which Time you must bring them into Court, and deliver it to one of the Serjeants, who will draw it at Bar, as the Manner is, and pay the Fees in Court; which done, take it from the Serjeant, and deliver it to the Prothonotary, who marks it thus; *At the Bar*. And then he gives it you again, which deliver to your Clerk
in

in the Prothonotary's Office, who will exemplify it, and make the Recovery perfect and fitted for the Seal; and if the Tenant appear by Warrant of Attorney, it needs no Summons; otherwise if Tenant and Voucher both appear by Attorney.

Observe, That due Entry be made on the Roll all the Way you go on.

Note; If the *Dedimus* be for Vouchers, you must put down their Names in the Instructions, and the Voucher must set his Hand to the Warrant.

Then deliver it to the Commissioners, with a *Præcipe* and Warrant, or Warrants of Attorney ingrossed, and let them take the Caption and enter it thus:

Taken and acknowledged at Torr in the County of Devon, the ninth of June in the tenth Year of the Reign of his present Majesty King George the Second, &c. before, &c.

Return the *Dedimus* on the Back thus:

The Execution of this Writ or Commission, in a certain Schedule annex to this Writ or Commission.

Observe; The Prothonotary will return the Writ of Entry, and give it you fixed together with the Writ of Summons, Warrant of Attorney, and Copy of the Declaration.

The Writ of Entry being returned, you must file it, the Writ of Summons you must get sealed, and fix them together till the Writ of Summons is returnable; at which Time you must

bring the same into Court, and deliver it to one of the Serjeants, who will draw it at the Bar, as the Manner is. You must pay the Fees in Court; which done, you take it from the Serjeant, and give it the Prothonotary, who will mark it thus, (*At the Bar*) and give it you again, which you must deliver to your Clerk in the Prothonotary's Office, who will exemplify and make your Recovery perfect and fitted for the Seal.

Note also; Where you will take your Warrant by *Dedimus potestatem* before special Commissioners, then there must be a Transcript of the Warrant of Attorney, and a *Mittimus* unto the Common Pleas, where it is taken by Course into the Country. The Form of the *Mittimus* see in the latter Part, and proceed, as before-said, as in a Fine.

The Attorney must be very careful in the true Returning and Filing his Writs, and Examining and Filing his Warrants, and other Proceedings, for fear of committing Error; and for that End, by the *Stat. of 23 Eliz. c. 3.* it has been usual, especially in important weighty Matters, to exemplify the Writs, Returns, and Warrants of Attorney, for fear of being embezzled, whereby the Recoveries might be overthrown.

If you are to search for any Recovery of an old Term, you may search in the Office of the Clerk of the Warrants of Attorney, where you will soonest find it of any Place, because all the Prothonotaries bring in their Plea-Rolls, on which the Recoveries are enter'd, to the Clerk of the Warrants to take them into a Book.

Observe; When the Recovery is had before Commissioners, who take the Conusance, one
of

of them not being a Knight, (as it often happens) then a Certificate must be drawn upon the Back of the *Præcipe*, and Warrants to be carried to a Judge for his *Allocatur*. The Form of which may be thus:

A. B. Gent. one of the Commissioners in the Writ of *Dedimus* named, maketh Oath, That these Warrants were duly taken, the Vouchers being of full Age.

A. B.

The *Mittimus* you must open, to which must be filed the *Writ of Entry*.

Note; The *Præcipe* must be prepared, and properly drawn from the Deeds, as to the Parcels; and ingross it thus, if it be single Voucher.

Middlesex, ss. Command *A. B.* that he justly render to *C. D.* one Messuage and ten Acres of Land, with the Appurtenances in *E.* which he claims, &c.

If it be with double or treble Voucher, you only vary it according to the Number of the Vouchees.

If it be with single Vouchee, it is thus:

The Tenant personally voucheth to Warranty.

Tho. Welcome.

N. B. That when it is by double Voucher, the Tenant, instead of calling to Warranty the common Vouchee, calls to Warranty that Person which is vouched before the common Vouchee;

chee; (*Form of which, see in the End;*) and there s no Need to insert the Forms of treble and quadruple Vouchee, by drawing out the Entry at Length, when the Alteration is so obvious: For when it is with treble Voucher, it varies only from the double, that instead of *B. G.* (the first Vouchee) calling the common Vouchee to Warranty, he calls the other; so differs only by the Addition of them.

Note; The Writ of *Dedimus*, to Commissioners in the Country, is sent down under Seal, *i. e.* inclosed in the Wax; and then you must appoint for two of the Commissioners to go to the Party, and take the Acknowledgment of the Warrants of Attorney. Form of the Warrant of Attorney is thus.

Devonsh. ss. John Speedwell appoints in his Stead *William Goodfriend* and *John Williams*, against *Thom. Byall* Gent. to gain or lose in a Plea of Land.

N. B. A Warrant of Attorney for the Vouchee, differs only in this.

Devonsh. ss. John Speedwell, and *Agreeable* his Wife, whom *John Speedwell* vouches to Warranty, appoints, &c. as above.

When a Recovery is suffered by the Tenant in Person, you carry the *Præcipe* to a Serjeant's Clerk, and the Tenant being present, the Count in the Recovery, the Voucher to Warranty, and the Prayer of an Imparlance, are repeated by some of the Serjeants at Bar.

You pay the Serjeant's Clerk, if it be with single Voucher, 6 s. and if with double Voucher, 8 s. 10 s. with a treble Voucher, and 12 s. with a quadruple Voucher. And if it be by Warrant of Attorney, you pay him 4 s. more, and 2 s. more to the Secondary.

At the Alienation-Office you pay, in Term-Time, 1 s. 6 d. to the Clerk of the Office, and 6 d. to the Receiver; and if out of Term, while the Commissioners sit at the Office, 2 s. and after that Time, 2 s. 6 d. to the Clerk of the Office, and 6 d. to the Receiver.

Note; Sometimes the Tenant appears in Person, and the Vouchee by Attorney, which makes a small Alteration in the *Præcipe*, (known to all Practisers) and need not be here inserted; and sometimes neither the Tenant nor Vouchee appear in Person, but by Attorney; but for more Clearness I will insert them after the *Præcipe* thus.

If the Tenant appears in Person, and vouches by Attorney, it is thus:

The Tenant personally voucheth to Warranty
A. B. (whereupon the Summons is return-
able on the Morrow of the *Holy Trinity*)
who by Attorney vouches over

John Leasall.

If neither the Tenant nor Vouchee appear in Person, but by Attorney, then it is thus:

The Tenant (by Attorney) voucheth to Warranty *John Speedwell*, and *Agreeable* his Wife, (whereupon the Summons is return-
able

able on the Morrow of the *Holy Trinity*)
 who also by their Attorney vouch over
John Leafall.

And when the Warrant for the Tenant and Vouchee is taken before a Serjeant at Law, or before a special Commission, as before partly recited and laid down, you must first sue forth a Commission for taking the Warrant of the Tenant; which being ingrossed and returned, then sue forth a *Mittimus* with a Writ of Entry, &c. This is not drawn till the Return of the Vouchee's Summons, then Entry is made of the *Mittimus*, Count, Demand and Voucher, with Award of Summons against the Vouchee, (as when the Warrant is taken before a Judge) then a Transcript and Writ of Summons, (as when before a Judge) then a *Dedimus potestatem* for the receiving the Warrant of Attorney for the Vouchee, as before; and the Warrant to be ingrossed, as before; and the *Dedimus potestatem* to receive the Warrant for the Vouchee being returned with a *Mittimus* thereon, Proceedings at the Bar, and Entry of the Recovery are, as before, when the Writs are taken before a Judge.

And if, after the Caption before Commissioners, any of them refuse to return it, the Party grieved, may, by *Certiorari*, compel such Commissioner, his Executors or Administrators, to certify it.

Observe, That when the Recovery is drawn, whether suffered by Warrant for *Dedimus*, or by the Tenant in Person in Court, &c. it is to be enter'd on the Plea-Roll, which the Prothonotary will give you for that Purpose.

And

And the next Thing then is to make an Exemplification thereof, for your Client to keep the Form of the Exemplification. See among the *Precedents* towards the End.

And the same Form will serve for double or treble Voucher *mutatis mutandis*.

You must teste your Exemplification after the Return of the Writ of Seisin; but then if there be not fifteen Days betwixt the Teste and the Return, (or a Writ of Summons, when by Summons) and the End of the Term, then the Writ of Seisin must be returnable immediately, and the Exemplification must bear Teste the last Day of the Term in which the Writ of Entry or Summons came in.

The Exemplification being made, and also your Writ of Seisin, and returned of Course, then examine your Recovery with the Prothonotary, having first perfected the *Præcipe* in the Remembrance, according to the Teste and Return of your Writ of Error.

Then docket the Recovery; which done, the Prothonotary will sign your Exemplification; which, with your Writ of Seisin, you must get sealed; then see them filed with the *Custos Bre-vium*, for that is the Warrant for the Proceedings had; and then all is finished, giving the Exemplification to your Client; or you may, being at a little more Expence, have the Writs of Seisin and Entry exemplified, with their Returns; which Exemplifications are had at the Inrollment-Office, which Office was erected by the 23 of *Eliz. cap. 3*.

**The Method of passing Recoveries
in London.**

RECOVERIES are suffered and passed in the Court of Hustings, which is the supreme Court of Judicature within the City of London, a very ancient Court of Record, where all Lands and Tenements, Rents and Services, within the City of London and Liberty, are pleadable at the Guildhall of the said City in two Hustings, one whereof is called *Hustings of a Plea of Land*, the other *Hustings of Common Pleas*.

The Manner is thus: A Writ of Right Patent is to be obtained from the Cursitor, by first giving Instructions to one of the Attornies of the Court, who will draw a Writ for the Cursitor, from whom a Writ of Right Patent is to be obtained, and he will cause it to be sealed, and then being deliver'd to one of the Attornies of this Court, he will prepare the Record, and pass the Recovery, and exemplify the same. And a Deed must be sealed to lead the Uses of the Recovery, and the same must be inrolled, which must be done by the Persons that seal the Deed before the Lord Mayor, or the Recorder and one Alderman, and acknowledge the same; and if a Wife be Party, she is to be examined whether it be done with her Consent, and if she says yes, then the Lord Mayor, or Recorder and one Alderman, set their Hands to it, and then deliver it to the Clerk of the Inrollments, (the second Attorney of the Lord Mayor's Court) who at the next Hustings will

cause Proclamation to be made, according to Custom; and such a Deed bars the Wife of Dower, and is a good Bar in *London*, as a Fine at Common Law.

If the Vouchers cannot attend in Court, they may appoint an Attorney of this Court; which Warrant must be acknowledged before the Recorder, who will set his Hand to it, and his Fee is 6 s. 3 d. The whole Fees for passing the Recovery are 4 l. besides the Shillings Duty, and the Fees for the Inrollment are 9 s.

*Of Recoveries suffered in the Court
of the Grand Sessions of Chester.*

THE Recoveries, on the Default of the Vouchee, are entered thus; after the common Vouchee has appeared and pleaded, then the Demandant imparls generally the same Sessions, without any certain Day, by the Word *petit Licentiam inde inter loquendi & habet*; and then comes into Court again, and the Vouchee is called and makes Default, which is a Departure in Despite of the Court, being in the same Sessions; and the Vouchee having no Day given him by the Court, nor imparls to any Day certain, but being always supposed to be present, therefore Judgment is enter'd without a *Petit Cape*; for if the Imparlance had been of another Term, then it would have been no Departure, though he had not appeared, but a *Petit Cape* must have been first awarded. See *Tolv.* 211. 2 H. 6. 38 Ed. 3. 13. 18 Ed. 4. 41. 14 H. 8. 22. *Cro. Jac.* 292.

TABLE

T A B L E

O F

F E E S

On suffering

R E C O V E R I E S.

The Charge of a Recovery with single Voucher, where the Tenant appears at Bar.

FOR drawing the <i>Præcipe</i> ———	o	2	6
For taking it into the Rembrancer	o	1	0
To the Curfitor for the Writ of Entry	o	2	6
New Imposition for the Seal ———	o	0	6
The King's Fine, rated by the Commissioners according to the Value of the Lands ———	}		
New Imposition according to the Rate			

To

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To the Receiver —————	o	o	6
For a Doctor's Hand for entering } and indorsing in Term-Time ———	o	1	2
For drawing it at the Bar, to three } Serjeants —————	o	10	o
To the Box —————	o	o	6
Common Vouchee —————	o	o	4
To the Attorney General for signing } the Writ of Entry —————	o	10	o
The Secondary in Court receives ———	o	2	6
Return of the Writ of Entry ———	o	2	o
Drawing the Count and Judgment ———	o	2	6
For exemplifying it, and Parchment, —	o	7	6
To the Prothonotary for the Entry } 'thereof —————	o	10	o
For sealing thereof —————	o	2	2
Imposition —————	o	7	6
The Writ of Seisin and Return ———	o	4	o
The Seal thereof and Imposition ———	o	1	1
For filing the Writs of Entry and } Seisin with the <i>Custos Brevium</i> , } and Common Vouchee —————	o	2	4
The Attorney's Fee —————	o	6	8
But if your Recovery be with double } Voucher, the Prothonotary will } have of you for the Entry —————	o	14	6
For every treble Voucher ———	o	18	6
To the Clerk for every Voucher } more —————	o	2	o

The Charge of a Recovery by Summons, Warrant of Attorney, and Dedimus.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
FOR drawing the <i>Præcipe</i> and } Warrant of Attorney ————— }	0	3	4
<i>Dedimus Potestatem</i> —————	1	4	2
Cursitor for the Transcription of the } Return and Imposition ————— }	0	11	0
The making of the Writ of Sum- } mons ————— }	0	2	0
Sealing thereof, with the Imposition	0	1	1
Entry of the Summons for the Pro- } thonotary ————— }	0	4	6
If with a Warrant of Attorney, } then ————— }	0	6	6
To the Clerk for drawing and in- } grossing the Summons ————— }	0	2	6
To the Clerk for entering the Sum- } mons, with <i>Mittimus</i> and <i>Dedi-</i> } <i>mus</i> , on the Roll ————— }	0	5	4
For making and filing every War- } rant of Attorney ————— }	0	1	4
For Return of the Writ of Summons	0	2	0
For filing thereof —————	0	1	0

Charges extraordinary, if the Recovery be under the Great Seal of England.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
FOR the <i>Certiorari</i> —————	0	13	4
The Allowance thereof —————	1	9	6
The Clerk for his Pains ——— ———	0	6	8
For the Exemplification, every Skin —	1	6	8
And to the King for the first Skin } for Imposition ————— }	2	0	0
For every other Skin for Imposition —	1	0	0
For the Seal —————	1	0	6

Charges of a Recovery with two Vouchers in Person at the Bar.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
FOR drawing your <i>Præcipe</i> —————	0	2	6
For taking it into the Remem- } brance ————— }	0	1	0
For your Writ of Entry ——— ———	0	2	6
To the Receiver —————	0	0	6
For the Doctor's Hand, Enttring and } Indorsing ————— }	0	1	6
For drawing it at Bar, and four Ser- } jeants ————— }	0	13	4
To the Cryer —————	0	0	6
To the Box —————	0	0	6
To the Warden of the Fleet —————	0	0	6
For the common Vouchee ——— ———	0	0	4
For the Attorney General's Hand to } the Writ ————— }	0	10	6

	<i>l.</i>	<i>s.</i>	<i>d.</i>
For marking the Remembrance when the Recovery is drawn at the Bar, and to the Judge and Clerk of the Warrants ———— }	0	3	0
For the Return of the Writ of Entry	0	2	0
For the <i>Post Diem</i> of the Writ of Entry	0	0	4
For the Return of the Writ of Seisin	0	2	0
For the Prothonotary for the Entry of the Recovery ———— }	0	14	6
To the Clerk for exemplifying of it, and making the Writ of Seisin — }	0	7	6
For sealing the Exemplification and Writ of Seisin ———— }	0	2	9
For filing the Writs of Entry and Seisin ———— }	0	2	0
For the Fee of Defendant, Tenant, and Vouchee in the Recovery — }	0	10	0

*Charges of a Recovery by Summons
upon a Warrant of Attorney.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
F OR drawing your <i>Præcipe</i> and the Warrant of Attorney ——— }	0	3	4
For Entry of the Summons to the Prothonotary ———— }	0	4	6
For making the Writ of Summons, and the Seal ———— }	0	2	7
To the Clerk for drawing the Sum- mons and the Entry in Parchment }	0	2	6
For filing every Warrant of Attorney	0	0	8
For Return of the Writ of Summons	0	2	0
For the Filing it ———— }	0	1	0

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	<i>l.</i>	<i>s.</i>	<i>d.</i>
The Prothonotary hath for his Entry for every Summons ———— }	0	4	6
For every single Voucher ————	0	10	6
For every double Voucher ————	0	14	6
For a treble Voucher ————	0	18	6
For every <i>Dedimus</i> and <i>Mittimus</i> ————	0	6	0

The Charge of a Recovery under the Great Seal of England.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
FOR the <i>Certiorari</i> ————	0	13	4
For the Allowance thereof ————	1	9	6
For the Exemplification of every Skin ————	1	6	8
For the Seal ————	1	0	6

The Fees of a common Recovery, as suffered in Wales with a single Voucher. Vaughan's Pract. Wall, 88, 89, 90.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
THE Declaration against the Tenant ———— }	0	3	0
The Replication ————	0	2	0
The Declaration against the Vouchee ————	0	2	0
The Replication ————	0	2	0
The Imparlance ————	0	1	0
Judgment against the Tenant ————	0	2	6
Judgment against the Vouchee ————	0	2	6
The Writ of <i>Habere fac' Seisinam</i> ————	0	2	6
Entry Return ————	0	2	0
Exemplification ————	0	6	8

With double Voucher.

D eclaration against the Tenant —	o	2	0
Replication —————	o	2	0
Declaration against the Vouchee —	o	2	0
Replication —————	o	2	0
Declaration against second Vouchee—	o	2	0
Replication —————	o	2	0
Imparlance —————	o	1	0
Summons to Warranty ————	o	2	0
Thence the same against the Tenant	o	2	6
Thence the same against the Vouchee	o	2	6
Judgment against the first Vouchee—	o	2	6
Judgment against the second Vouchee	o	2	6
The Writ of <i>Habere fac' Seisinam</i> —	o	3	6
Entry, Return —————	o	2	6
Exemplification —————	o	6	8
Receiving and recording every Fine	o	11	0

Roll of Hillary Term.

THE Roll being enter'd, and the Writs returned with the Sheriff's Name, which you make perfect before you examine the Recovery with the Prothonotary, and the Attorney General's Hand being indorsed upon the Writ of Entry; then the Recovery is enter'd and exemplify'd by the Clerk of the Prothonotary's Office, on a Skin of Parchment in an ingrossing Hand, and a 10 s. Stamp thereon.

This being done, the same Clerk makes you out a Writ of Seisin, and returns it, and examines the Recovery with the Plea-Roll; the

Reco-

Recovery is enter'd on with the Prothonotary, who must sign the Exemplification; which being done, you get it sealed, and deliver it to your Client, and you must see the Writ of Entry and Seisin filed with the *Custos Brevium*.

The Exemplification you examine with the Prothonotary, together with the Roll, Writ of Entry, Summons and Seisin, the Remembrance and Docket; and having so done, you pay the Prothonotary 1 l. 5 s. for the Entry of the Recovery, filing the Writs, and signing the Exemplification, if the Recovery be double Voucher, with Warrant of Attorney; but if a double Voucher in Person, then you pay him only 13 s. One may be made Tenant in Possession by a Fine *sur Conusance de droit come ceo*, or by Deed of Feoffment, or Bargain and Sale inrolled, &c.

Note; If the Client will be at the Charge, you may have both the Writs of Seisin and Entry exemplified, with their Returns, for fear of Miscarriage in filing them; which Exemplifications are had at the Inrollment Office. See *Stat. 23 Eliz. cap. 3.*

Rules and Orders relating to Recoveries.

Mich. 29 Car. 2. *Rules, &c. in C. B.*

THrough the great Complaint that hath been made to this Court of the Neglects of Attornies and Clerks to file the Writs and Warrants of Attorney, whereupon Common Reco-

veries have been suffered, and of the Mischiefs that have thereupon happened; and for the Prevention of such Mischiefs and Dangers in Time to come, it is order'd, as well by the Consent of the *Custos Brevium*, as of the Prothonotaries and Clerk of the Warrants of this Court, That at all Times hereafter, when the said Prothonotaries shall examine and sign the Exemplifications of such Recoveries, they, in their respective Offices, do then cause all the said Writs, being sealed and duly returned, and all Warrants of Attorney thereupon taken without Writ, to be left in their Hands to be filed, with the usual Fees for filing the same, without *post Terminum*; and that the said *Custos Brevium* and Clerk of the Warrants, or their known Deputies, shall receive from the said Prothonotaries, in their respective Offices, the said Warrants of Attorney and Writs, with the said Fees for filing thereof in Manner following: To wit, For the said Writs and Warrants prosecuted and perfected of this present Term, and every other Term of *St. Michael* in *Easter* Term then next following; and for the said Writs and Warrants of Attorney of every *Hillary* Term, in *Trinity* Term next after; and for the said Writs and Warrants of Attorney of every *Easter* Term, in *Michaelmas* Term next after; and for the said Writs and Warrants of Attorney of every *Trinity* Term, in *Hillary* Term then next following; and that the said *Custos Brevium* and Clerk of the Warrants, or their said Deputies, shall give Receipts under their Hands of all such Writs and Warrants as shall be from Time to Time received of each of the said Prothonotaries, by way of Duplicate, containing the
County

County where the Lands lie, the Names of the Demandants, Tenants and Vouchees, who come in by Writs of Summons; and also of the Attornies and Clerks Names who prosecuted the said Recoveries.

*Fra. North,
Hugh Windham,
Rob. Atkins,
Will. Scroggs.*

Observations relating to common Recoveries, and how falsify'd.

Recompencc in Value is not the sole Reason why a Recovery bars; for Recoveries are favour'd, by reason they are for the Preservation of Estates, are become the common Assurances of the Nation, and are not taken so strictly as real Recoveries are, and the superfluous Words in it will not hurt it. 2 *Saunders* 96.

A Recovery of Lands in a County Palatine, at *Westminster* is void; 1 *Saund.* 74. because out of the Jurisdiction of those Courts.

Nothing can bar a Tenant in Tail from suffering a Common Recovery. See *Litt. Rep.* 234. And such Condition and Limitation of an Use so to do, or devise in a Will, &c. is void.

Where a Common Recovery is suffered, the Recoverors, their Heirs and Assigns, may distrain for Rents, Services and Customs, and make Avowries for the same, as those Persons against whom such Recovery is should have done,

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done, if the said Recovery had not been, and shall recover their Costs and Damages. 7 H. 8. cap. 4.

Termors and Tenants, by Stat. 3 Elegit, shall enjoy their Farms and Estates against all Recoverors upon feigned Recoveries. 21 H. 8. cap. 15.

Covinous Recoveries void by 14 Eliz. cap. 8. Sect. 2.

All Recoveries, void against Tenant for Life, by Courtesy, &c. against those in Reversion. 10 Rep. 45. a. unless where Tenant in Tail vouches. 14 Eliz. cap. 8.

Note; There are three Incidents to Recoveries, which cannot be restrained by Condition or Limitation: These Incidents are inseparable to an Estate-tail, viz. Dower, Tenant by Courtesy to bar the Intail by a Recovery, a Fine to bar Issues.

Note; It is not always necessary to alledge how the Tenant in a Common Recovery became Tenant; but to say, that a Writ of Entry was brought against A. B. then Tenant of the Freehold. *Lutw.* 1549. But the usual Way is to plead how he became Tenant.

It is a Rule, that every Stranger to a Recovery may falsify, if he came not in pending the Writ against him against whom the Recovery was, for he cannot have Error or Attaint. *Cro. Eliz.* 284. pl. 1.

As to the Uses of a Recovery, see Stat. 4 & 5 Ann.

To plead a Common Recovery, see *Lutw.* 1549. 2 Lev. 31. to Uses, 2 Mod. 70.

No Writ of Error shall be to reverse a Common Recovery after twenty Years, by the *Stat. of 10 & 11 W. 3. cap. 14.*

All Declarations of Trusts, Uses and Confidence, shall be good by Deed made, or to be made of Fines and Recoveries, &c. by the *Stat. 4 & 5 of Ann.*

Cases in Law and Equity relating to Recoveries.

TO every Recovery there must be a good Tenant to the *Præcipe*, or it is void; that is, the Writ of Entry must be brought against the Tenant of the Freehold, whether the same be in Fee or Tail, or for Life; but it cannot be brought against those in Reversion or Remainder, because not in the actual Seisin of the Land; but they must come in as Vouchers.

Tenant to the *Præcipe pendente placito*, before Judgment, is well enough. 1 *Show.* 347. See 2 *Salk.* 568.

A Recovery cannot be suffered by Tenant for Years, for want of a Freehold.

A Recovery bars not a Devise to younger Sons, which is to be paid by the Heirs, because it would be mischievous. *Cro. Jac.* 593. *Percell* and *Brown's Case*.

A Gift in Tail reserving Rent, a Recovery by Tenant in Tail bars not the Rent, nor a Rent granted by Tenant in Tail. *Ibid.* Nor a Rent granted by Tenant in Fee. 2 *And.* 170.

A Recovery bars not an Executory Devise. *Cro. Jac.* *Pell* and *Brown's Case*, *Gardner* and *Sheldon's Case* in *Vaugh.*

Leases

Leases are not barred by a Recovery. 2
Leon. 65.

Husband and Wife suffering a Recovery, bars her of Dower; Recoveries, the Remainders or Reversions, being in the King, and the Land the Gift of the King, or any of his Progenitors Kings of *England*; I say, such Recoveries will not bar the Issue in Tail of his Entry, nor discontinue the Land, nor devest such Remainders or Reversion out of the King. See 34 *H. 8. cap.* 20.

Hence all such Persons may be Demandants, Tenants, and Vouchees in these Recoveries, as may be Conusors or Conusees in a Writ of Covenant, and by such Names *mutatis mutandis*; except against Tenant in Tail, the Reversion or Remainder being in the King, as before said.

Before such Persons, and by such Means, and in such Manner and Form may Warrants of Attorney be acknowledged and certified, as Fines acknowledged in the Country, excepting that such Warrants of Attorney may be taken by any Justice, or Serjeant, without a Writ of *Dedimus*; and Fines must be paid upon Writs of Entry, as upon Writs of Covenant; and such Writs must be signed by the Attorney General before they can be sealed.

If the Tenant comes in where perfect Tenant has but an Estate for Life, or in Dower, or by the Courtesy, then to have a good Recovery, it is proper, that such Tenant make a conditional Surrender of the Estate to him in Reversion or Remainder, to make himself perfect Tenant of the Inheritance, and then to bring the Writ of Entry against him; and after that the Recovery is executed, the particular Tenant,

nant, for Breach of the Condition, may enter and enjoy the Term, notwithstanding such Surrender. See *Recoveries in London*.

A Common Recovery may be of Rent, *Lutw.* 1224, 1225. or of an Advowson. *5 Rep.* 40. *a. b.* 41. *a.*

A Recovery has the same Effect in Equity, or in Law, to bar the Intail and Remainders suffered by *Cestui que Trust* of an Estate-tail, as if he had the legal Estate in him. *1 Vern. Rep.* 440.

It has been resolved, that a Common Recovery, though defective as to the Tenant in *Præcipe*, will bar an equitable Estate-tail in Trust only. *2 Vern.* 132.

If Tenant in Tail makes a Mortgage, or confesses a Judgment, &c. and after suffers a Common Recovery, the Recovery shall enure to make good all his precedent Acts and Incumbrances. *1 Chan. Caf.* 120. And the Chancery has decreed to what Uses a Common Recovery of Lands shall operate, it being uncertain by the Deeds and Conveyances. *1 Chan. Rep.* 98.

On a Recovery had, it was objected, that the Recovery was a wilful Forfeiture in Point of Law, and was voluntary, and on no Consideration, and that it ought not to be supplied and maintained in Equity; but the Court demanded it. *Goodrick against Brown.* *1 Chan. Caf.* 49.

A Child *in ventre sa mere*, it is said, may be vouched in a Common Recovery; a Bill may be brought in its Behalf, and Injunction to stay Waste. *2 Vern. Rep.* 411.

It is a Rule, that none can falsify a Common Recovery but he who claims under him that suffer'd it. *Raym.* 29.

Recoveries are of that Reputation, that they are strengthened by the *Stat. of 31 Eliz. cap. 2. 2 Inst.* 519.

The Writ of Entry must be brought against a Tenant of the Freehold in Possession, whether the same be in Fee or Fee-tail, but cannot be brought against those in Reversion or Remainder, because they are not in the actual Seisin and Possession of the Land, but they must come in as Vouchers; so that there must be a good Tenant to the *Præcipe*; and adjudged that a Tenant to the *Præcipe pendente placito*, before Judgment, is well enough. *1 Show.* 347. See *2 Salk.* 568.

An Entry shall be intended to be a good Execution of a Recovery, without a Writ of Seisin. *Jones* 20.

A Recovery shall be to the Uses of him who suffered it, if none are declared. *9 Rep.* 8. *b.* *11. a.*

The Recompence in Value goes only to them that have Loss. *Plowd. Com.* 514. *b.* 515. *a.*

A Common Assurance, by Recovery, is made thus; the Tenant in Tail bargains and sells by Deed inrolled, and nothing passes but a Fee-simple, descendible during the Life of the Tenant in Tail only. *1 Sand.* 260, 261. *Car.* 208, 209.

Leases are not barred by a Recovery.

If Tenant for Life surrenders to the Heir in Tail, the Heir in Tail may suffer a Recovery, and bar all Reversions and Remainders expectant thereon, *5 Rep.* 6. *b.* because the Tenant
in

in Tail can make no good Tenant to the *Præcipe* without his Surrender; but he may levy a Fine without it, which will bar his Issue, and all claiming under him.

And a Recovery suffered by Tenant in Tail in Possession, binds all till it comes to the Crown. *Moor Cas.* 466. 2 *Rep.* 15. *b.* 16. *a.* See 3 *Leon. Cas.* 84.

A Recovery shall not bar an Executory Devise, *Carter* 53. and see what an Executory Devise is, *ibid.* for it is no Remainder, but Independent. See *Pell* and *Brown's Case*, *Cro. Jac.* 590. *pl.* 13. *Chudleigh's Case*, 1 *Co.*

Quære, 4 *Mod.* 255, 256, 257, 258, 259.

What is sufficient to make a Tenant to the *Præcipe*?

It has been held, that if the Feoffment were made on a valuable Consideration, inasmuch as that is a Disposition of the Use, there is an Estate in the Feoffees to retain it till the Death of the Feoffors; and this is an Estate of Freehold, and affords a Tenant to the *Præcipe*, and an Estate to support the contingent Remainders. *Co. Litt.* 22. *b.* 23. *a.* *Moor* 120, 121.

Note; The Word *hereafter* in a Deed to lead the Uses of a Recovery, excludes the Uses from being executed in the Deed. *Roll's Abr.* 199. *Watson* and *Wentworth*.

Husband and Wife suffering a Recovery as Vouchees, it is a Forfeiture. See this Case, *Moor* 715. And it is a Forfeiture within the *Stat.* of 11 *H.* 7.

A Feme Covert is barred by a Common Recovery, and it is the common Practice, *Bro. Abr.* *Recovery in Value* 27. 10 *Co.* 43. And it is not
I necessary

necessary to examine her upon a Common Recovery, yet it is prudential to do it; tho' in a Fine it is otherwise, because there is no Recompence there in Value, and the Feme is here Tenant to the *Præcipe*, and she shall be estopped to speak against the Recovery, for she joins in the Recovery with her Husband, and here is no Default made by the Baron; and now the Record is perfect, and a Thing contrary to it is not to be averred against it; but before the Record was perfected, she might have pleaded, and the Recompence in Value here shall go to the Heirs of the Wife; and the Tenant for Life is also bound by this Recovery, and the Feme is Privy to this Recovery. If a Stranger had been Tenant to the *Præcipe*, and the Husband and Wife had been vouched, the Wife had been bound; and this is a stronger Case, *Style* 319. *Lockeer* and *Palfryman*: But it was the Opinion of Justice *Bridgman*, in the *C. B.* 1 *Sid.* 11. that a Feme Covert ought to be privately examined in a Common Recovery; and it is my Lord *Coke's* Opinion, 10 *Co.* 45. in *Portington's* Case, that the Wife used to be examined in a Common Recovery, and a *Dedimus potestatem* granted to take her Examination of the Conufance.

A Wife, in a Common Recovery, being within Age, is to appear by Guardian, *Hill.* 17 *Jac.* K. B. *Holland* and *Lee*; but it is doubted of by *Rolle*, 1 *Abr.* 288.

But it is not to be doubted, as plainly to me appears. 1 *Sid.* 322. *Raby* and *Robinson*.

If the Husband lose, by Default, the Fee-simple Lands of his Wife, the Wife had no Remedy but by a Writ of Right; but by the *Stat. W. 2. cap. 3.* she shall have a *Cui in Vita*.

The Customs of *London*, as to Recoveries suffered by Husband and Wife, are as strong to bind the Right of the Wife, as a Fine at Common Law. *Dyer* 290, 363.

If a Recovery be had against Husband and Wife, Tenants for Life, by Default, they may have a *Quod ei deforcean*. 2 *Inst.* 372. by *Stat. W.2. cap. 4.* and after the Death of her Husband, she may have a *Quod ei deforcean*.

A Man shall not assign Error to defeat the Estate given to himself, by a Fine or Recovery. 5 *Rep.* 35. *Tey's Case*.

To what Purposes a Recovery, Fines, &c. are respected as common Conveyances. See *Lev.* 29, 55.

To the Rules touching Vouchees, &c. see Observations of *Holt*, Ch. Just. in the Case of *Page* against *Hayward*, *Trin.* 3 *Ann.* in *K. B.* 2 *Salk.* 571.

As to the End, Effect, and Operation of Recoveries, see Resolution of the Court in the same Case of *Page* against *Hayward*. *Holt* Ch. J.

Collateral Conditions are barred by Recoveries. 2 *Salk.* 570, 571.

Next, it is to be observed what Things, what Estates, and what Persons are barred by Common Recoveries, besides what has been alledged in the Case above-mentioned. See 2 *Lev.* 28, 29, 30.

As to Recoveries by Baron and Feme, see the Case of *Haines* against *Baily*, *Pasc.* 8 *W.* 3. 5 *Mod.* 210, 211. and the Case of *Clithew* against *Franklin* and Wife, *Pasc.* 2 *W. & M. C. B. Rot.* 207. 2 *Salk.* 568. 1 *Sid.* 83. and the next Case

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to the last mentioned in *Salk.* and *Maxwell's* Case in *Plowden*.

A Stranger is not barred by it or Non-claim, as in a Fine. 3 R. 3. No Writ of Error shall reverse a Recovery after twenty Years. See 23 *Eliz.* cap. 3. 16 *Car.* 2. cap. 9, 16. 17 *Car.* 2. cap. 8.

Feigned Recoveries were invented when Intails grew inconvenient, for an Estate in Tail might last for ever.

Common Recovery being a feigned, formal, and ceremonious Suit and Judgment.

A Recovery by Tenant for Life is good, if he in the next Remainder assents to it.

But a Common Recovery being had, by Consent and Covin, between the Tenant for Life and the Recoveror, this is a Forfeiture of his Estate, and he in the Reversion may immediately enter.

Tenant for Years cannot suffer a Recovery. See 14 *Eliz.* cap. 8.

If a Writ of Entry is against Tenant in Tail in Possession, and a Stranger who has nothing in the Land, yet the Recovery is held good, and the Recompence shall go to the Tenant in Tail. 1 *Vent.* 1. 358 *Anonymus*.

But in the Case of *Leath* vers. *Colin*, 3 *Co.* fol. 6. b.

If Tenant for Life, and he in Remainder in Tail, suffer a common Recovery by being made Tenant to the *Præcipe*, this shall not bind the Issue in Tail; for though he in Remainder is joined with the Tenant for Life, as Tenant to the *Præcipe*, and the Land is recover'd against him only; and the supposed Recompence can-

not

not vest in him in Remainder, because the Land is recover'd against the Tenant for Life only.

If there be Lessee for Life, and the Remainder is to *B.* in Tail, and a *Præcipe* is brought against him in Remainder in Tail, if he has a Surrender from the Lessee for Life, at any Time before the Recovery is compleated, it is a sufficient Recovery, and the *Præcipe* is made good. *Noy* 126.

Also, if a Bargain and Sale be made to Lessee for Years in Reversion, to make him Tenant to the *Præcipe*, this will not destroy his Term. 2 *Roll's Rep.* 249. 1 *Mod.* 107. The Reason is, because the Term was in him to another Purpose, which the whole Court agreed. *Fountain and Coke's Case.* See also 7 *Co.* 38. *a.* and 2 *Croke* 643.

And if a Bargain and Sale of Lands be made to *B.* and his Heirs, *B.* has an Estate before his Entry sufficient to be made Tenant to the *Præcipe*.

When a Tenant for Life is not made Tenant to the *Præcipe*, nor has surrender'd his Term, a common Recovery cannot be suffered to bar the Intail; and the Reason is, because the Writ of Entry supposes a Disseisin, which cannot be where there is a Tenant for Life in Possession; but it would be good in a Writ of Right. 1 *Vent.* 360. *Moor and Pitt's Case* in *K. B.*

Where a Tenant to the *Præcipe* is made by a Fine, and the Recovery is suffered, and afterwards the Fine is reversed by Writ of Error, yet the Recovery is good. *Lloyd and Evelin's Case* in 2 *Salk.* 568.

And if Tenant to the *Præcipe* gains the Freehold any Time before the Judgment is supposed

to be given on the Recovery, the Recovery will be good, for he is in actual Possession. See 2 *Salk.* 568. *Lucy* vers. *Williams*.

Note, That a Recovery may be aided by the Court of Common Pleas upon a Writ of Error brought, for a Common Recovery was suffer'd, and the Writ of Error was not filed, and upon this a Writ of Error was brought: And *Hatcham* moved, that it might be examin'd whether any Writ was filed or not, but the Court deny'd it; but if it can appear by Record that a Writ was filed, then they will consider whether a new one shall be filed or not; and they said, that if a Recovery be exemplified by the *Stat. 23 Eliz. cap. 3.* although any Part thereof be lost, yet it is aided. *Litt. Rep. fol. 229.* *Tit. Recovery.*

A Recovery may be defeated, falsify'd, and frustrated in Part or Whole, for many Causes, though a Recovery was not voidable for false or incongruous *Latin*, (when it was in Use) Rasure or Interlineation, or the Mis-entry of any Warrant of Attorney, Mis-return or Non-return of the Sheriff, or other want of Form in Words, and not in Matter of Substance, because it is had by Consent of the Parties.

And it may be avoided, for that he that hath the Estate and Right, is neither Party nor Privy to the Recovery.

Or that he against whom the Writ is brought was no Tenant to the Freehold, either by Right or Wrong, at the Time of the Writ brought.

Or where the Writ of Entry is brought against a Disseisor, and he vouches a Stranger that has nothing in the Lands.

Or

Or where a Recovery is had, against the Husband alone, of the Lands whereunto the Wife has Title of Dower.

A Wife shall frustrate and set aside a Recovery suffered by her Husband alone, as to her Title of Dower only, and no longer or farther.

And he that is in Reversion or Remainder shall avoid the Recovery suffer'd by the Tenant for Life, either in the Life-time of the Tenant, or afterwards; but he in Reversion or Remainder cannot falsify a Recovery suffer'd by Tenant in Tail in Possession, except for some of the Reasons before mentioned.

Nor can the Recoveror himself falsify a Common Recovery, or a Tenant or a Guardian.

Where a Recovery is voidable or reversible, it must be by Cases, as aforesaid, avoided by him whom it doth concern, that is barred and bound by the Recovery, who should have had the Land, had there been no Recovery.

In Common Recoveries, no Construction may be admitted against the common Allowance of them, and usual Course of Practice and Experience therein. 2 Co. 25. *Wing. Max.* 742.

A Common Recovery differs in the Judgment and Proceedings in other real Actions, because it is had and done by the mutual Consent of both the Parties, and *Consensus tollit Errorem*, 5 Co. 40. and common Error makes it a Law. *Jenk. 6 Cent. Case 51.*

A Recovery may be falsify'd (or proved false) and avoided, as aforesaid: 1. By Writ of Error, 1 *Inst.* 104. b. when there is some gross Error in the Matter or Substance, as when an Infant, or Feme Covert suffers a Recovery without her Husband; but by the *Stat. 10 E³ 11 W. 3. cap.*

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14. which enacts, *That no Writ of Error shall be brought to reverse a Common Recovery after 20 Years*: But as to the first Part relating to Error, see the *Stat. 23 Eliz. cap. 3.* 16 *Car. 2. cap. 9.* 16 & 17 *Car. 2. cap. 8.*

And a Recovery may be avoided, by pleading that it was by Covin against Tenant for Life, to disinherit him in Reversion, or, that he against whom the Writ is brought is no Tenant to the Freehold, by Right or by Wrong; or, that he that has the Estate is neither Party nor Privy to the Recovery; or where the Recovery is had, against the Husband alone, of the Land to which his Wife has Title of Dower; or because another hath some Estate in the Thing whereof the Recovery is had, as a Lease for Years, &c.

And further, a Recovery may be defeated and frustrated by Motion to the Court, and praying a *Vacat* to the Judgment, by the *Stat. 11 H. 7. cap. 20.* A Recovery by Covin, suffer'd by Wife sole, or with after-taken Husband, of her Estate in Dower for Life, or in Tail jointly with her Husband, or only to herself, of Lands, &c. of the Inheritance or Purchase of the Husband, or given to the Husband and Wife by the Husband's Ancestors, &c. shall be void, and he that has Right may enter after her Decease. See the *Stat. 32 H. 8. cap. 28.* 1 *Rep. 176.* 5 *Rep. 50, 51, 60, 61, 62.* 5 *Rep. 70, 79.* 1 *Inst. 326.*

By the *Stat. 2. H. 8. cap. 15.* a Termor for Years may falsify a Common Recovery had against him in Reversion, and shall enjoy his Term against the Recoveror, according to his Lease.

Lease. 1 *Inst.* 46. a. 104. b. 335. 2 *Inst.* 322.
11 *Rep.* 43.

The Recoveror may have the same Remedy by Avowry or Action of Debt for Rent and Services reserved upon such Lease, and due after such Recovery, and also like Action for Waste as the Recoveeree had. See 7 *H. 8. cap.* 4.

No *Stat.* or Execution by *Elegit*, shall be avoided by such feigned Recovery, but such Tenants shall have like Remedy to falsify such Recoveries as Tenant for Years.

By several *Statutes*, Recoveries suffered by Spiritual Persons, &c. of Lands held in Right of the Churches, &c. shall not bind their Successors. 1 *Inst.* 43, 342.

By the 14 *Eliz. cap.* 8. all Recoveries had by covinous Agreements of the Parties against them in Reversion by Tenant by Courtesy, Tenant in Tail, after Possibility of Issue extinct, Tenant for Term of Life or Lives, &c. shall be void against them in Remainder or Reversion, and against their Heirs and Successors.

This *Stat.* extends not to any Recovery, unless by corrupt Agreement or Covin. 1 *Rep.* 15. 3 *Rep.* 60, 61. 10 *Rep.* 45. 1 *Inst.* 362. Nor doth it prejudice any one that shall, by good Title, recover Lands, &c. and if there be Tenant for Life, Remainder in Tail, Remainder or Reversion in Fee, if Tenant for Life be impleaded by Agreement, and vouch Tenant in Tail and he vouch over the common Vouchee, this shall bar the Remainder and Reversion in Fee, though he in Remainder or Reversion did never assent to the Recovery.

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An Infant that bars by a Recovery, may not avoid it by Entry, but must frustrate it by Writ of Error. *Style's Rep.* 246.

A Recovery, in some Cases, may be avoided by others, as where it is had of the Land, whereof I have an Estate for Years, by *Stat. Elegit*, or the like, at the Time of the Recovery had.

And where a Recovery is to be defeated in any of the above-mentioned Cases, it must be by one whom it doth concern; and a Stranger shall never take Advantage of a Recovery, tho' erroneous. *Fenk. 8 Cent. Case* 32.

Sometimes it may be avoided by Entry, as well as by Writ of Error and Pleading.

Most Errors in Common Recoveries are amendable by the Court, by *Stat.*

Where, by whom and how a Recovery may be falsified. See *Hughes's Nom.* pag. 459, 460. 2 *Co. Inst.* 320. 2, 3.

As to the Uses of Common Recoveries, see *Moor's Rep.* 95, 727. *Hob. Rep.* 338. *Godb. Rep.* 417.

A Lease and Release to make a Tenant to the *Præcipe* is held good, without any Consideration. 1 *Mod.* 262. *Barker* vers. *Kent.* But *Quære*, the Court would advise farther. The Conussee of a Fine levied in the *Octave* of the Purification of the Blessed Virgin *Mary*, is sufficient to make a Tenant to the *Præcipe* for a Recovery suffer'd the same Day, and the Law will suppose a Privy to support the Conveyance.

Further, If a Man be out of the Realm, he shall not avoid a Recovery had against him by
De-

Default by a Writ of Error, as he shall do a *Capias utlegatum*, or if he be imprison'd; but he is not without Remedy by Writ of higher Nature, or a *Quod ei deforceat*. Co. 1 Inst. 260. b.

And if a Judgment be given against a Tenant in Tail upon a feint or false Action, and Tenant in Tail die before Execution, no Execution can be sued out against Tenant in Tail; but if in a Common Recovery Judgment be had against Tenant in Tail, where he voucheth to Warranty, and has Judgment to recover over in Value, although the Tenant in Tail die before Execution, yet the Recoveror shall execute the Judgment against the Issue in Tail, in respect of the intended Recompence, for that it is the Common Assurance of the Realm. Co. 1 Inst. 361, 362.

A Recovery by Remainder Man is within the Equity of the *Stat. of West. 2.* because within the same Mischief.

Note; The Heirs of such Tenant in Tail, against whom such Recovery shall be had, shall take no Advantage for any Recompence in Value against the Vouchee or his Heirs. See 34 & 35 H. 8. cap. 20.

A *Stat. Merchant*, *Stat. Staple*, or Execution by *Elegit*, not avoidable by a feigned Recovery. 21 H. 8. cap. 15.

A Voucher, he that calls the Vouchee to Warranty.

As to Recoveries by Infants, see *Stoke's* and *Oliver's Case*, *Pasc. 8 W. 3. 5 Mod. 109, 110. Hob. 197. Cro. Car. 327. Bridg. 73. 1 Roll's Abr. 731, 750, 751. 1 Sid. 322.*

And

And Precedents of Recoveries by Infants, see Sir *John St. Alban's Case*, *Trin. 1 W. & M.* in *C. B.* 2 *Salk.* 567.

Sir *John St. Alban* being of the Age of Nineteen, his Sister marry'd one of the Footmen, (and his Sister was next in Remainder, and also his Heir;) he petitioned the King to suffer a Common Recovery, who referred it to the Judges of the Common Pleas, before whom several such Precedents of Recoveries, by Privy Seals, were cited, viz. that of *Bivirry*, 1st *June* 10 *Car. 1.* and that of *Young*, 23d of *November* 11 *Car. 1.* and another 13 *Car. 1.* another 14 *Car. 1.* another 1 *James 2. cap. 2.* others 2 *fac. 2.* another of *John* the Son of Sir *John Croke*, 12 *Car. 2.* but the Judges observed, that seven of these Petitions were by Fathers upon their Sons, and an equal Recompence given, and, in short, disallowed by them. 2 *Salk.* 567.

Observe, As to reversing and falsifying Recoveries, the anonymous Case of *Pasc. 10 W. 3.* in *K. B.* where a Recovery having been in that Court reversed, the Reversal was also there reversed, and the Recovery remained good. 5 *Mod.* 397. This Case is worth Notice. See also a Common Recovery reversed, without a *Scire facias* to the Ter-tenants, 3 *Mod.* 319. though that Case seems not to hold well, because in the same Book, p. 274. it is said, that there must be a *Scire facias* against both the Heir and the Ter-tenants, when a Writ of Error is brought to reverse a Recovery. See 3 *Mod.* 274. 1 *Salk.* 339. 2 *Salk.* 598.

And it is to be particularly remarked, that in the Case of *Lloyd* against *Evelyn*, *Pasc. 5 W. & M.* in

in the *K. B.* in Error to reverse a Common Recovery, it appeared that the Tenant to the *Præcipe* was made by a Fine, and that the Recovery was suffered, and the Recovery afterwards reversed, and yet it was held a good Recovery, for there was a good Tenant to the *Præcipe* at the Time it was suffered. 2 *Salk.* 568. And 2 *Salk.* in the Case of *Lacy* against *Williams*, that if the Tenant to the *Præcipe* has the Freehold at any Time before Judgment, it is sufficient.

Note; A Voucher always supposes a Seisin, for it is always a good Counter-plea, that the Voucher had nothing at the Time of vouching, and the *nec unquam postea* is not material; and if the Tenant pleads a *Non-tenure*, as he might and ought, that only binds himself, and those that claim under him, and that are Parties by Estoppel. See more of this, 2 *Salk.* 51. *Holt* Ch. J. A Stranger is not barred in a Recovery by Non-claim, as in a Fine. 3 *Rep.* 5.

As to the End and Effect of Common Recoveries, see 2 *Salk.* 570. *viz.* That a Condition which runs with the Land cannot be barred by a Common Recovery, 1 *Vent.* 199, 202. where Words expressing a Condition shall be taken as a Limitation in a Will. And Conditions collateral are barred by Recoveries. 1 *Mod.* 108, 111. 2 *Salk.* 570, 571.

N. B. A Common Recovery shall be good, notwithstanding a Grant to the King. *Telv. Pool* and *Needham's* Case, and 2 *Rep.* *Wiseman's* Case; *Moor*, N° 953. See also *Smith* and *Farnaby's* Case, 1 *Sid.* 285.

A Common Recovery will not bar or avoid Acts or Charges, Rents or Conditions made or granted

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granted by Tenant in Tail. See *Cro. Eliz.* 218. *Plegard and Lake*.

If a Tenant to the *Præcipe* be made by Lease and Release, it is good, though there were no Consideration. 1 *Mod. Rep.* 262. *Baker and Keat, Quære*.

And a Stranger may be made Tenant to the *Præcipe* with Tenant in Tail, 1 *Vent* 358. and so is a Bargainee before Entry, *Carter's Rep.* 78. But Bargainee, before Inrollment, is no good Tenant. *Godb. p.* 218. 2 *Inst.* 657.

A Lease and Release to make a Tenant to the *Præcipe*, is said to be good. 1 *Mod.* 262. *Moor* 953.

And it is to be observed in the Case of Infants, that if an Infant appear by Guardian, either as Defendant or Vouchee, he shall be bound as well as one of full Age; where an Infant comes in Person as Vouchee, Error lies not after full Age, because it must be tried by Inspection, which cannot be after full Age; if he appears by Attorney, and suffers a Common Recovery, then it shall be reversed by Error, otherwise if by Guardian. *Sid.* 321. *Raby and Robinson.* 2 *Kel.* 141. *Mod.* 48. *Hesket and Lee.* *Styles* 246. See also *Hob.* 196. *Cro. Eliz. p.* 321. *Hopton and his Wife against St. John.* 1 *Leon.* 29.

And also a Recovery suffered by a Feme Covert that hath a Husband, who doth join with her Husband in the Recovery, is good, and will bind them, their Heirs, and all others; but if she be an Infant, and appears as Vouchee by her Attorney, this Recovery will not bind her. 10 *Co.* 43. *Plowd.* 515. *Brid. Rep.* 69, 70, 71. See more Cases relating to this Head in *Lilly Conv. Tit. Recoveries*.

Note,

Note, That there are divers Cases concerning Voucher and Counter-plea of Voucher, and the Manner of pleading therein, as you may see in *Co. 2 Inst.* 241 to 246.

Where Baron and Feme were joint Copyholders to them and their Heirs, which they surrender'd to the Lord of the Manor, who, in Consideration of a Sum of Money, granted the same Lands to them, and to the Survivor of them for Life, Remainder to the Heirs of their two Bodies, &c. The Husband died, leaving Issue, after the Wife suffered a Common Recovery, and then the Heir of the Body of the Husband and Wife enter'd, by Virtue of the *Stat. 11 H. 7.* and it was clearly held that his Entry was lawful; because, by the Acceptance of the new Estate to them, and to the Heirs of their Bodies, the Copyhold was extinguish'd. *Cro. Eliz.* 24. *Stockbridge's Case.* See *Hide's Case* in 4 *Rep.* 31.

N. B. By 11 *H. 7.* it is enacted, That if a Woman, who hath an Estate for Life, or in Tail jointly with her Husband, or only for herself for Life, or for her Use, in any Lands, &c. of the Purchase or Inheritance of her Husband, or given to the Husband and Wife by his Ancestors, do sell, or with a second Husband discontinue, or suffer a Common Recovery by Covin, it shall be void; and he to whom the Lands ought to belong, after the Death of the said Woman, may enter, &c. 11 *H. 7. cap.* 20. *Moor* 185. S. C. by the Name of *Hide* vers. *Newport.*

Neither is a Copyhold Estate barred by the Statute of Fines and Non-claim. *Noy* 23. *Mills* vers.

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vers. *Bradley*, 3 Rep. 77. * *Fermer's Case*, S. P. But † *Margaret Podger's Case* seems otherwise.

By the *Stat. of 12 Car. 2. it is enacted*, That the Father of a Child under the Age of twenty-one Years, though he himself is under that Age, may by his Will dispose the Custody of such Child till he shall be twenty-one Years of Age, or for any less Term; but it hath been adjudg'd, that a Copyholder is not within the *Stat.* to dispose the Custody of his Child, where there is no Custom of the Manor so to do; for where there is no such Custom, the next of Kin, to whom the Land cannot descend, hath the Custody both of the Infant and his Estate; but if there is such a Custom, it shall be good against (it) the Statute; otherwise it might be prejudicial to the Lord of the Manor. 3 Lev. 395. *Clement's Case* vers. *Cudmore*.

N. B. * *Fermer's Case* was thus: *ſſ.* A Copyholder, who had likewise other Land in the Manor of C. demised the Whole to *J. S.* for Life, and then levied a Fine, as well of the Copyhold as the Freehold, which were comprehended under these general Words: *Of all his Lands and Messuages in C.* And after the Fine levied he continued still in Possession, the Lessee for Life died, the five Years expired, and the Conusee claim'd Inheritance. Adjudg'd, That the Lord was not barred by this Fine; for a Copyholder cannot bar the Lord, he having no Title to the Inheritance. 3 Rep. 77. *Fermer's Case*.

† *W. R.* a Copyholder for Life, Remainder for Life, the Lord bargained and sold the Manor, and levied a Fine to *J. P.* who died, and it descended to *Margaret Podger*, who levied a Fine, and the five Years passed without any Claim, &c. it was resolved, that Copyholds are within the *Stat. 4 H. 7.* by the Word *Interest*; but that if the Fine be by *Covin*, it shall not bar the Issue. 9 Rep. 104. *Margaret Podger's Case*.

Ancient

*Ancient Demesne, what it is, and
Cases of Fines and Recoveries
thereon.*

ANcient Demesne, or *Demain*, from the French, *Demaine*, which signifies *Patrimonium Domini*, and is called *Vetus Patrimonium Domini*, is a Tenure by which all the Manors belonging to the Crown, in the Reign of *Edward the Confessor*, and after him, in the Reign of *William the First*, commonly called the *Conqueror*, were held by those Tenants to whom they were granted by those Kings; and the Lands which were before in the Hands of *Edward the Confessor*, at the making of the Book of *Domesday*, after by the Command of *William the First*, were Ancient Demesne, and all the Rest Frank-fee, wherewith *Fitzberbert* agrees. *Reg. Brev. 12. F. N. B. 161.* The Tenants who held these Lands are called *Tenants in Ancient Demesne*, and the others *Tenants in Frank-fee*, &c. *Kitch. 98.*

The Number and Names of the Manor in Ancient Demesne, as of all others belonging to the Subjects, were written in a Book by the Command of *William the First*, after a Survey made of those Manors throughout *England*; which Book now remains in the Treasury in the Exchequer, and is called *Domesday-Book*: 'Twas made in the Reign of *William the First*, and is sometimes called *Magna Rolla Winton*, because of old 'twas kept at *Winchester*. The Saxon Word *Dom*, or *Doom*, signifies in *Engliss*
4 a Sen-

a Sentence or Judgment. Our Ancestors had many *Dom-Books*; King *Alfred* had a Roll, which he called *Domesday*, and in *Latin* our *Domesday Book* is called *Liber Judicialis, vel Censusalis*.

At this Day, *Demains* are commonly taken to be the Lord's chief Manor-Place, with the Lands thereunto belonging, which he and his Ancestors have from Time to Time kept in their own manual Occupation, for the Maintenance of themselves and Families; all the Parts of a Manor, except what is in the Hands of Freeholders, is still reputed to be, in a manner, in the Lords Hand; but this Word is often used for a Distinction betwixt those Lands the Lord of the Manor has in his own Hands, or in the Hands of his Lessee, demised on a Rack-Rent, and such other Land appertaining to the Manor which belongs to Free or Copyholders. *Bracton, Book 4. Tract. 3. cap. 9. Fleta, Book 5. cap. 5.*

Now all Lands in *England* are mediately or immediately held of the Crown, and when a Man in pleading would signify his Land to be his own, he saith that he is seised thereof as in Fee; that is, *in Dominico suo ut in Feodo*; so that although his Estate be to him and his Heirs, it depends upon some superior Lord, and is held by Rent or Service.

Again, the Word *Demaine*, in a special Signification, is opposite to Frank-fee, which is where Freeholds are exempted from all Services; but not from Homage, which is now antiquated; and in the *Register of Writs*, we find that is Frank-fee which a Man holds at the Common Law to him and his Heirs, and not by such Service

vice as is required in Ancient Demesne, according to the Custom of the Manor.

Ancient Demesne, of Fines levied thereof in the Manor Court.

WHERE a Fine is levied of Lands in Ancient Demesne, according to the Custom of the Manor, and by him who is Tenant in Tail in Possession, though without Proclamations, yet such Fine shall bar the Estate-tail. *Dyer* 60, 72. See 1 *And.* 71. *Elme's Case.*

It was resolved by *Holt*, Ch. J. in the Case of *Zouch* against *Thomson*, That a Fine levied of Lands in Ancient Demesne in the Court of the Manor, is a Discontinuance, but no Bar, for it recovers a Freehold, which works a Discontinuance of the former Estate; therefore a Fine levied in that Court, if it may be properly called a Fine, must be of the same Consequence and Effect as other Fines are: And he held that Fines may be levied of Lands in Ancient Demesne, in the Lord's Court, upon a Writ of Right Close, because it is agreeable to the Power of that Court in other Instances; for it is a Court which may try the Mife joined upon a Writ of Right, which hath the same Effect upon a Non-claim as a Fine hath; and if a Fine could not be levied there, it could be levied no where of these Lands; so that the Privileges of these Tenants would be rather a Disadvantage to them than otherwise, but that can-

not be reasonably intended. 1 *Salk.* 57, 144. *Zouch* against *Thomson*.

But he held, that a Recovery in Ancient Demesne with double Voucher, suffer'd in the Court of the Manor, was a Bar to an Estate-tail, as it is in the Court of Common Pleas; for it shall be intended that there was a good Foundation to support a Custom to suffer a Recovery in that Court; and it is Custom alone which hath given this Manner of Conveyance of Estates such Operation and Effect. And as to a Fine,

If a Tenant in Ancient Demesne levies a Fine at Common Law of his Lands, he hath a Possibility of having them again, because the Lord of the Manor may make it void, by bringing a Writ of Deceit against the Parties to the Fine; but if the Conusee is in Possession, and then the Conusor releaseth all his Right, and confirms the Estate of the Conusee, in such Case, though the Fine should be afterwards avoided, yet by Virtue of such Release, the Conusee and his Heirs should hold the Land. In *Lampit's* Case, 10 *Rep.* 46, 50.

In a Writ of Deceit, the Plaintiff set forth that he was seised in Fee of the Manor of *Bromsgrove* in *Worcestershire*, which, Time out of Mind, was Ancient Demesne, and that all Lands held of the said Manor are pleadable *in Curia Manerii prædicti per parvum Breve de Recto Clauso*; and that the Defendants, intending to defraud the Plaintiff of the Profits of the said Manor, had levied a Fine, in the Court of Common Pleas at *Westminster*, of certain Lands, Parcel thereof; by Reason whereof, these Lands were

now

now become Frank-fee, and pleadable at Common Law, *ad exhereditationem* of the Plaintiff, and to his Damage 46 l. The Fine was reversed, because levied *coram non Iudice*, which makes it intirely void. **1 Lutw. 711.** Countess of Plymouth against James.

Judgment in Ejectment for Lands in Ancient Demesne, and upon a Writ *de Procedendo ad Executionem Judicii* out of the Court of King's Bench, directed to the Suitors of the Court of the Manor, they returned that they could not execute it, because it appeared to them, by a Transcript of a Fine levied of these Lands at Common Law, they were Frank-fee now: But this Return was not good, because the Parties had allowed the Jurisdiction of the Court before, and it is now too late, after Judgment, to say that the Lands are Frank-fee; for if they are, that ought to have been pleaded before the Plaintiff had obtained this Judgment. **Moor 451.** *Gybon versus Bowyer.*

As to Cases relating to Fines and Recoveries suffer'd by Baron and Feme, Husband and Wife, take the following References, &c. though some Mention has been made on this Head before.

LORD Hobart's Rep. 225. 7 Co. 8. Coun-
 tiffs of Bedford's Case. Style 245. in Hay-
 wood and Williams's Case. Trin. 7 Jac. B. R.
 Keblethwait and Ward. 1 Roll. Abr. 114. cited.
 1 Vent. 48. 1 Roll. Abr. 375. Hody and Linn.
 Moor 557. Cro. Eliz. Mesme Case. Trin. 22
 Jac. B. R. Eustace and Scarwen. 2 Saund. 180.
 Watton and Hele. Mod. Rep. Dyer 358. Cro. Eliz.
 744. Southcoat and Manors. 1 Leon. 285. 1 Leon.
 114. Worsley and Charnock. 2 Co. 77. 1 Vent 209.
 3 Keb. 14. in Marshal and Lady Prettyman's
 Case. 1 Mar. Dyer 89. b. Verney's Case. Style
 472. Videan and Fletcher. Pasc. 7 Jac. B. Booth's
 Case. Hob. 330. Fermer's Case. Cro. Eliz. 290.
 Baxter and his Wife against Atonating. Moor
 124. Cro. Car. 200. Holme and Heyfield's Case.
 4 H. 7. cap. 24. Moor 53. Beckwith's Case. 2 Co.
 Mich. 15 Jac. B. R. Webb and Worfield. 2
 Saund. 386, 7, 8. Plowd. 540. Ear and Snow.
 Heb. 27. Style 319. Locke and Palfryman.
 10 Co. 45. in Portington's Case. 3 Co. 6. Cuple-
 dike's Case. 3 Co. 5. Owen and Morgan's Case.
 2 Roll. Abr. 394. Grosvenor and Massy's Case.
 1 Leon. 291. n. 318. 11 H. 7. Moor 715. the
 Queen

Queen and Savage. *Sid.* 322. Raby and Robinson.

Dyer 290, 363. A Recovery suffer'd by Husband and Wife, of the Land of the Wife, is as strong to bind the Wife's Right, by Custom of London, as a Fine at Common Law.

A Woman brings a Writ of Error, and assigns for Error, that *Tempore levationis Querele* she was *Cooperta cum viro*; the Defendant in the Error demurs, and adjudged for him, because she ought to have pleaded it in Abatement at first. 7 *W. B. R.*

When Baron and Feme levy a Fine of the Wife's Land, and the Baron declares by one Deed the Uses, and the Wife by another, or else that neither of them declare any Uses which are sufficient in Law, there the Law doth immediately revest the Uses in the Feme solely. 2 *Rep.* 57, 58.

Where the Bargain and Sale, Recovery and Fine, although made, suffer'd, and levied at several Times, yet by the mutual Consent of the Parties make but one Assurance, according to the original Contract; and therefore every of them tending to perfect the Bargain, none of them shall destroy any Part of it. 2 *Rep.* 75. *a.* See 2 *Mod.* 233.

Voucher, as has been before said, partly is either to defend the Right against the Defendant, or to yield him other Lands, &c. in Value, and it extends to Lands or Tenements of Freehold or Inheritance, and not to any Chattel real, personal or mix'd. He that voucheth is called the Voucher (*vocans*,) and he that is vouched is called Vouchee (*warrantatus*;) the Process, whereby the Vouchee is called, is a *Sum-*

moneas ad Warrantizandum, &c. A Recovery with a single Voucher, is when there is but one Voucher; and with a double Voucher, is when the Vouchee voucheth over; and so of a treble Voucher. There is also foreign Voucher, when the Tenant being impleaded within a particular Jurisdiction, as in *London*, or the like, voucheth one to Warranty, and prays that he may be summoned in some other County out of the Jurisdiction of that Court, which may properly be called a Voucher of a Foreigner. *De forinsecis vocatis ad Warrantiz* Co. Lit. 101. b.

There shall not be any Counter-plea, but where it is thereby proved, that he who is vouched had not such an Estate whereof he could make a Feoffment. *Cro. Eliz.* 698. pl. 25.

If the Tenant will vouch to Warranty a dead Man, or one where there is no such Person, the Demandant shall be received to say he is dead, or that there is no such Person.

Select LAW CASES in *Fines* and *Recoveries* suffered by, and relating more particularly to the following Heads, *viz.* Corporations or Bodies Politick, Baron and Feme, Tenants in Ancient Demesne, Counties Palatine, Freeholders, Copyholders, Tenants in Tail, in Fee, Infants, Vouchers, &c.

IF a Mortgagee suffer a Recovery, this will not bind the Mortgager; but if the Mortgager be a Party to the Recovery, the Recovery will be good. 2 Cro. 592, 593.

An Act of Parliament, or the Common Law, may make an Estate void as to one, and good as to another, but a Man by Words cannot so

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do; as if Lands be given to Husband and Wife, and the Heirs of their two Bodies, and the Husband levieth a Fine with Proclamations, and then dieth, having Issue. Now this Fine, by Force of the *Stat. 4 H. 7.* and the Explanation thereof by the *Stat. 32 H. 8. cap. 36.* shall bar the Issue in Tail, but not the Wife. So in a *Præcipe*, if one be vouched in regard to the Demandant, the Vouchee is Tenant, and Release to him is good; but in regard to a Stranger, he is not Tenant. *1 Co. Rep. 87. Corbet's Case.*

Tenant in Tail suffereth a Common Recovery, this shall bar not only the Estate-tail, but also the Estate for Life in Remainder, altho' the Remainder in Fee was in the Queen; for it is out of the *Stat. 34 H. 8.* because the Estate-tail was not of the Queen's Gift, nor of any of her Ancestors Kings of *England.* *2 Co. Rep. 52. Sir Hugh Cholmely's Case.*

If the King give Land in Recompence of any Service done to him, or for other Cause, and the Tenant in Tail, whilst the Reversion is in the King, suffer a Common Recovery, this shall be said to be fraudulent and void, as against the King and his Successors, by the *Stat. 34 H. 8. cap. 20. 10 Co. 84. Plowd. 54.*

If one devise Land to another and his Heirs, as long as *A. B.* hath Issue of his Body, in this Case no Recovery will seclude or bar him that made the Gift of his Possibility to have the Land again, unless he be a Party to the Recovery by Voucher, for a Recovery against a Tenant in Fee-simple shall never bind a collateral Interest, Title or Possibility, as a Condition, Covenant, or the like. *2 Cro. 593.*

It is said, that if Land be to *A.* for Life, the Remainder to *B.* in Tail, the Remainder to *C.* in Fee, *B.* dieth, his Wife (being young with Child of a Son) and a Recovery is had against *A.* with the Assent of *C.* and afterward a Son is born; in this Case, the Son shall not be holpen by the *Stat. 32 H. 8.* for that the Remainder was not in *esse* at the Time of the Recovery.

2 *Leon. 224.* Case 285. *Quære de hoc.*

If two Coparceners in Tail lose by Default, they shall join in a *Quod ei deforceat*, yet the Default of the one is not the Default of the other; but if Tenant in Tail lose by Default, and die, the Issue in Tail shall not have a *Quod ei deforceat*, but a *Formedon* in the Descender. 2 *Co. Inst. 351.*

A Recovery in a Writ of Right against Tenant in Tail, without a Voucher, is no Bar of any Gift in Tail. 1 *Co. Inst. 373. a.*

How far Feoffees and Conusees have a Power to destroy contingent Remainders, see *Pollexfen 384, 385.* *Hales* against *Risley.*

The Case of *Macbill* against *Clerk* in *Farresly's Rep. p. 18.* (*Holt* Chief Justice) was a celebrated Case, and ought to be taken notice of particularly, this Report containing several learned Arguments and Objections. And the Case was thus:

Error in this Court, on a Judgment given in the Common Pleas, where the Question on a special Verdict was this: A Tenant in Tail, in Consideration of a Marriage of his Son, covenants to stand seised to the Use of himself for Life, Remainder to the Use of his Son and Heir, and the Heirs Male of his Body by his intended Wife, with several Remain-

Remainders over; and after he suffers a Recovery, in which he himself is Tenant to the *Præcipe*, and vouches over the common Vouchée, which Recovery was to other Uses than those mentioned in the Covenant: So the Question was, Whether the Tenant in Tail, notwithstanding the Covenant to stand seised, continued seised in Tail, for then the Recovery was good; otherwise it could not be good in this Case, he coming in as Tenant to the *Præcipe*? And *Williams* here argued, that the Covenant was void. Thus Estates-tail owe their Being to the *Stat. de Donis*, which is the only Law which restrains Conveyances of them at this Day; and the Care of that *Stat.* regards only the Issue, and those in Reversion or Remainder, and does in no way extend to the Party himself during his Life; and in Favour of solemn Conveyances, the Issue himself, and those in Remainder or Reversion are put to their Action, in Case of Feoffments and Fines by a Tenant in Tail; and in all Cases, the Tenant himself is bound by his Alienation or Conveyance, as well since as before the *Stat.*

If Tenant in Tail make a Lease and Release to the Use of himself for Life, with Remainder over to another, the Remainder over is good till avoided, though it be to commence after the Death of the Issue in Tail; and the Reason is, because it issues out of the Estate by Lease and Release, which is good till avoided by Entry. He said the Ground he went upon was his own, but his Brothers concurred with him in the Main, and the Judgment in the Common Pleas was affirmed.

A Husband and his Wife were Joint-Copyholders to them and their Heirs, which they surrendered to the Lord of the Manor; who, in Consideration of a Sum of Money, granted the same Lands to them, and the Survivor of them for Life, Remainder to the Heirs of their two Bodies, &c. the Husband died, leaving Issue; afterwards the Wife enter'd and suffer'd a Common Recovery, and then his Heir enter'd by Virtue of the *Stat. 11 H. 7. cap. 20.* and it was clearly held that his Entry was lawful; because, by the Acceptance of the new Estate to them, and to the Heirs of their Bodies, the Copyhold was extinguished. *Cro. Eliz. 24. Stockbridge's Case.*

Tail. In a special Verdict in Ejectment, the Case was, That Copyhold Lands were demisable in Fee or in Fee-tail, or for Life, and *H. S.* being seised thereof in Tail, Remainder to *E. S.* in Tail, *H. S.* suffered a Recovery thereof in the Manor Court, and died without Issue; the Jury found there was not any Custom in the said Manor for Tenants in Tail to suffer Recoveries, &c. adjudged that this Recovery did not bind the Issue in Tail. *Cro. Eliz. 391. Clunn against Pease and Turner.*

A Surrender was made to the Use of the Surrendree in Tail, with Remainders over likewise in Tail; adjudged, That a Recovery shall not bar this Intail, without a special Custom. *Moor p. 188. Hill against Morse.*

Recovery. If a Recovery be in by Plaint, (in Nature of a real Action in a Manor Court) against a Tenant in Tail Copyholder, it shall be a Discontinuance, and take away the Entry
of

of the Heir in Tail; for inasmuch as Plaints, in the Nature of real Actions, are warranted by the Custom, it is an Incident which the Law annexeth to the Custom, that a Recovery shall be a Discontinuance. 4 Rep. 23. Deal and Rigden.

Copyholder for Life suffer'd a Common Recovery in the Lord's Court as Tenant in Fee; this is no Forfeiture of the Copyhold, because in a Baron Court, where the Freehold is not concerned, and is no Forfeit, the Lord being Party to the Recovery. 1 Mod. 199. Bird against Kirk. But by Co. Copyholder, Sect. 57. 'tis a Forfeiture *ipso facto*.

A Recovery was suffer'd in the Lord's Court upon a Plaint, in Nature of a Writ of Right, it was a Question, Whether a Precept might be awarded out of that Court to execute the Recovery, and to put the Recoveror in Possession by a *Posse Manerii*? Adjudg'd not; no Force being justifiable without Command of the King's Courts at Westminster.

If a Man be out of the Realm, he shall not avoid a Recovery had against him by Default by a Writ of Error, as he shall do an Outlawry, or if he be imprison'd; but he is not without a Remedy by a Writ of a higher Nature, or a *Quod ei deserviat*. 1 Co. Inst. 260. b.

If a Judgment be given against Tenant in Tail upon a feint or false Action, and Tenant in Tail die before Execution, no Execution can be sued against Issue in Tail. But if in a Common Recovery Judgment be had against Tenant in Tail, where he voucheth and hath Judgment to recover over in Value, albeit the Tenant in

Tail

Tail dieth before Execution, yet the Recoveror shall execute the Judgment against Issue in Tail, in Respect of the intended Recompence; and for that it is the Common Assurance of the Realm, and is warranted by our Books, and was not invented by Justice Choke, who was a learned Judge in *Edward the Fourth's Time*, as some hold by Tradition; but it may be it was upon former Authorities and Opinions of Judges discover'd by him, and assented unto by the Rest of the Judges. *1 Co. Inst. 361, 362.*

A Recovery by Render is within the Equity of the *Stat. 2 West.* because within the same Mischief; but a Recovery by Action tried is out of the said *Stat.* for that Act giveth no Remedy but where a Recovery is without Title. *2 Co. Inst. 342.*

A Recovery by Reddition of the Husband was not of so great Account in Law, as a Recovery against the Husband by Default; but therein, before the *Stat. 2 West.* this Diversity was holden for Law, that if in a Writ of Dower the Tenant did plead the Recovery in Bar, the Demandant might reply *Que ceo fait per Fraud, ou per Collusion, ou per gree le Baron*, as Britton saith: But if it were by Default without Covin, then the greater Opinion was it barred the Feme; but where he that recover'd by Reddition or Default had Right, there neither the Common Law, nor the said *Stat. of Westm. 2.* extended to it. *2 Co. Inst. 349, 350.*

If a Recovery be had by Verdict, the Feme shall not falsify in the Point tried; but she may say, that her Baron might have pleaded a better Plea, or confess and avoid the Recovery. *2 Co. Inst. 350.*

A De-

A Departure in Despite of the Court, (unless it be in a Writ of Right after the Mife joined) is holden to be within the Stat. West. 2. for he makes Default in that Case when he is demanded; but upon a *Nil dicit* no *Quod ei desorceat* doth lie. 2 Co. Inst. 351.

If Tenant for Life in a *Præcipe* vouch, and the Vouchee will not appear, by Reason whereof the Tenant loseth by Default, he shall have a *Quod ei desorceat* by Stat. 2 Westm. albeit the Judgment is not given for the proper Default of the Tenant; for that Stat. saith *per defaultam* generally, and not *per defaultam suam*. Co. 2 Inst. 351.

Trees shall be recovered by him who hath Right paramount by Recovery of the Land. 11 Co. Rep. 49. Richard Lyford's Case.

T. G. as Bailiff to Anthony Capell, distrain'd for the Rent behind at Michaelmas, 20 Eliz. and J. Hunt brought a Replevin; resolved by all the Justices, that the Recoverors, nor any who came in under their Estate, shall be subject to the Charge of him in the Remainder. 1 Co. Rep. 62. Capell's Case.

Where a Man shall make his Cofinage in *Scire facias* upon a Fine, and how. 3 Co. Rep. 15.

An Estate by Statute Merchant, Statute Staple and *Elegit*, may be barred, if a Fine is levied, and those that have Right suffer five Years to pass without Claim. 5 Co. Rep. 124.

If a Fine be levied of Lands in Ancient Demesne, it does not bar by the Statute of Non-claim. Lutw. 781.

As Deans, Bishops, Parsons, &c. are prohibited by Statute to levy Fines, and may not have

Have a Writ of Right, they are not barred by five Years Non-claim, and their Non-claim will not prejudice their Successors. *Plowd.* 138, 375.

If a Corporation which has an absolute Estate, so as to maintain a Writ of Right, is disseised of Land, and a Fine is levied by the Disfeisor, if they claim not in five Years, they are barred; but in such Case, it is said, that every Successor, being Head of the Corporation, may have a new five Years to make their Claim. *Plowd.* 537.

An Infant, appearing by Guardian, cannot suffer a Common Recovery; but if he obtains a Privy Seal for that Purpose, he himself is allowed to suffer a Common Recovery. A Feme Covert, with her Husband, is bound by a Recovery; but, as in a Fine, she ought to be examined. (*Qu.*) A Mortgagee cannot bind the Mortgagor, for he may enter for the Condition broken. *10 Rep.* 33. *Hob.* 196. *3 Cro.* 307.

And Voucher is when a *Præcipe quod reddat* is brought of Land against a Man, and another ought to warrant the Land to the Tenant, then the Tenant shall vouch to Warranty, and therefore he shall have a Writ called *Summoneas ad Warrantizand.* but if the Sheriff return, he hath nothing whereby he may be summon'd; then there shall go out a Writ called *sequatur sub suo periculo*, and when he comes he shall plead with the Demandant; or if he comes not, or if he comes and cannot bar the Demandant, then the Demandant shall recover the Land against the Tenant, and the Tenant shall recover as much against the Vouchers, and thereupon shall have

have a Writ called *Capias ad Valentiam* against the Vouchee. See 2 Co. Inst. 241 to 246.

If a Man in the County Palatine of *Durham* vouch a Foreigner to Warranty, the Demandant may counter-plead, that he hath Affers in the County Palatine for the Delay. 4 Co. Inst. 291.

If the Tenant vouch two, one within the County Palatine of *Durham*, and the other at the Common Law, Summons shall be awarded to the Lord of the County Palatine, commanding him that he summons the Vouchee to be at a certain Place before the Justices here to try the Warranty; and in this Case, if the Tenant recover in Value, the Justices shall write to the Lord of the County Palatine to render in Value. 4 Co. Inst. 219.

If one be vouched, if the Tenant prayeth that he may be summoned in the County of *York*, and the County Palatine of *Durham*, the Voucher shall stand; for if he be summoned in the County of *York*, it sufficeth. 4 Co. Inst. 219, 247. F. N. B. 6. E.

If Tenant in Tail suffereth a Common Recovery, it shall bar not only the Estate-tail, and Remainder and Reversion, but the Rent also, which he in the Remainder or Reversion hath granted. 6 Co. Rep. 42. Sir *A. Mildmay's* Case.

Common Recovery suffer'd of Lands in *Shrewsbury*, and the Liberties thereof, good to pass Lands in the Liberty of *Shrewsbury*, tho' lying out of the Town of *Shrewsbury*. Mod. Rep. 206. Part 1. *Jones and Wyat*.

If a Lessee for Years be Tenant to the Precipe for suffering a Common Recovery, that doth not extinguish this Term, because he was in

in for another Purpose. 1 *Mod. Rep.* 107. *Fountain and Coke.*

Fines and Recoveries of Copyholds.

AFTER various Opinions, it was at last settled in the Reign of Queen *Elizabeth*, that Copyhold Lands might be intail'd by the Custom of the Manor: It was in the next Place found to be expedient, that such Intails should be discontinued and barred. And the first Method for that Purpose was, that the Tenant in Tail in Possession should commit a Forfeiture, then the Lord should enter for the Forfeiture, and make a new Grant of the Copyhold, and by this Means the Estate-tail would be discontinued and gone; but then there must be a Custom to warrant this Point: And some Judges were of Opinion, that there could not be any such Custom, because by the Seizure the Copyhold Estate was destroyed. *Style* 450.

At last such Custom was allowed to be good, and that the Forfeiture by Custom was but in the Nature of a Surrender or common Recovery, made and suffer'd by the Tenant in Tail to bar his Issue or Remainders: 1 *Sid.* 314. 2 *Sand.* 422.

As to the Surrender made by a Tenant in Tail by the Custom of the Manor, that was likewise a Bar; but then Proof must be made of a Plaint, in Nature of a *Formedon* brought against the Surrendree, and Judgment given for him against the Issue in Tail, or him in Remainder. *Poph.* 128. *Lee* vers. *Brown.*

In the latter End of the Reign of Queen *Elizabeth*, a Common Recovery in the Lord's

Court, without a Custom to warrant it, was not allowed to bar the Remainder; which appears by the following Case.

5. *ff.* In a special Verdict in Trespass, the Jury found that the Lands, &c. were Copyhold, demisable in Fee, in Tail, or for Life; and that *T. S.* was seised of the said Copyhold in Tail, Remainder in Tail to *E. G.* and that the said *T. S.* the Tenant in Tail in Possession suffered a Recovery thereof in the Court Baron of the Manor, and declared the Uses to *W. R.* &c. and died without Issue, and they found that there was no Custom for Common Recoveries before that Time used in that Manor. Upon arguing this special Verdict, it was adjudg'd that this Recovery should not bar the Remainder Man, because 'tis the Nature of a Recovery to bind upon a Recompence in Value. Now, in this Case, there could be no such Recompence in Value of the Land of the common Vouchee; for if it should, then the Lord of the Manor would lose his Fine, and the Tenant who recovers in Value would hold the Land without any Admittance to it, and without any Grant from the Lord, which is essentially against the Nature of a Copyhold. *Cro. Eliz.* 391. *Clann* vers. *Pease*.

About the same Time, but after the Judgment in the Case before-mentioned, as reported by Justice *Croke*, we are told by my Lord *Coke*, that if a Recovery be had upon a Plaintiff, in Nature of a real Action, against a Tenant in Tail of a Copyhold, this is a Discontinuance; because since Plaints are warranted by Custom, 'tis incident that a Recovery upon such Plaints should make a Discontinuance of the Estate-tail:

tail: And he tells us the like Judgment was given in *Clunn and Pease's Case*, last mention'd, which is contrary to the Report of Justice *Croke*, &c. 4 Rep. 23. *Dell* vers. *Rigden*.

About the same Time it was likewise adjudg'd, that where T. S. the Tenant in Tail of a Copyhold in Possession, made a Surrender to E. G. in Tail thereof, with several Remainders over in Tail, that a common Recovery suffer'd by the Tenant in Tail in the Lord's Court, shall not bar these Remainders in Tail, without a special Custom for that Purpose. *Moor* 188. *Hill* vers. *Morse*.

Copyholder for Life suffer'd a common Recovery in the Lord's Court as Tenant in Fee; this is no Forfeiture of the Copyhold, because it was in a Court-Baron, where the Freehold is not concerned; and the Lord of the Manor could not take Advantage of it, if it was a Forfeiture, because he is a Party to the Recovery. 1 Mod. 199. *Bird* vers. *Kirk*.

The Father, being Tenant for Life of a Copyhold, suffer'd a Common Recovery in the Lord's Court, the Son enter'd, supposing this to be a Forfeiture, and surrender'd to the Plaintiff; and in a special Verdict in Ejectment, it was adjudg'd that this Surrender was void, because the suffering this Recovery made no Forfeiture, without a particular Custom to make it so. 2 Mod. 32. *Keen* vers. *Kirby*.

A Recovery was suffered in the Lord's Court upon a Plaint there, in Nature of a Writ of Right, and a Question was upon a Motion in the Common Pleas, Whether a Precept was to be awarded out of that Court to execute the Recovery, and to put the Recoveror in Possession

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session by a *Possse Manerii*? and adjudg'd it could not, because Force cannot be justify'd in such Cases, without Leave of the King's Courts at *Westminster*. 13 Leon. 99.

A Copyholder of Inheritance levied a Fine in the Lord's Court, his Heir being beyond Sea; and after Proclamation made at three several Courts, on his Non-appearance the Lord seised as forfeited; but adjudg'd no Forfeit. *Sed contra*, if he had been in *England* at the first Proclamation made, and afterwards went beyond Sea, for he shall not defeat the Lord of his Fine by his own voluntary Act. 8 Rep. 99, 100. *Sir Richard Letchford's Case*.

Where one enter'd upon, and put out a Copyholder, and levies a Fine as a Disseisor, and the Copyholder suffers five Years to pass after the Disseisin and Fine, and without making any Claim, the Interest both of the Copyholder and Lord are bound for ever; for this was not a Fine levied by Covin, because the Levying it was lawful, and the Lord must of Necessity know of the Disseisin, and the Disseisee might re-enter, or bring his Action within five Years. So if a Copyholder makes a Feoffment in Fee, upon a good and valuable Consideration, and the Feoffee levieth a Fine with Proclamation, and five Years pass, the Lord is barred; but if a Copyholder levieth a Fine, 'tis otherwise; for the Copyholder having no Freehold, the Fine is void.

A Surrender was made to the Use of the Surrendree in Tail, with several Remainders over likewise in Tail; adjudg'd, that a Common Recovery shall not bar this Intail, without a special Custom so to do. *Moor 188. Hill against Morse*;

Morse; or *Lane* against *Hill*, 1 *Lev.* 136. *Raym.* 164. S. P.

And in the same Book there is a Case, wherein it was adjudg'd, that as a Copyhold might be intail'd by Custom so to do, so likewise it might be barred by a Common Recovery, and that by a special Custom. A Surrender might bar the Issue in Tail. *Moor* 637. *Church* against *Wate.* *Cro. Eliz.* 148, 391, 392.

Fines are leviabie in Counties Palatine by the *Stat.* 38 H. 8. *cap.* 19. and 2 & 3 *Ed.* 6. *cap.* 28.

A Fine and Non-claim bars all Trust and Equity, where the Equity charges the Land; but where it charges the Person, in respect of the Land, it will not bar; also an Entry or Trust created by a Fine shall never be destroyed or barred by the same Fine. 3 *Salk. Rep.* 168. *Clemens* against *Langham.*

Where a Tenant for Life has a Power to make a Jointure on his Wife, and suffers a common Recovery, his Power is extinguish'd; but it is otherwise where a Power is Collateral; as for Instance, where an Executor has Power to sell. See 3 *Salk.* 297. *King* against *Melling.*

In a Writ of Error of a common Recovery, the Tenant to the *Præcipe* in the common Recovery was made by a Fine, and the Fine was reversed, yet it was held a good Recovery; for there was a Tenant to the *Præcipe* at the Time. 2 *Salk.* 568. *Loyd* against *Evelin.* *Pasc.* 5 W. & M. B. R.

If a Tenant to the *Præcipe* gains the Freehold before Judgment, it is sufficient; for it cannot be said to be a Recovery against him

that had nothing. 2 *Salk.* 568. *Lacy* against *Williams*.

Note; A Writ of Right Close is of a higher Nature than a Fine. 1 *Salk.* 340. *Hunt* against *Bourne*.

As to Fines levied by the King, we find divers Fines have been levied by the King, according to the Resolution in the Case of *Mich.* 2 *Fac.* 7 *Co. Rep.* 32.

Pleadings in Recoveries.

A Recovery was suffer'd by Tenant in Tail in Remainder; it was agreed it did not bind the Issue in Tail, but that he might falsify it; but if he in Remainder in Tail, or Fee-simple, suffer a Common Recovery, he and his Heirs cannot plead that they had *nihil in Tenementis*, but are estopped; for the Right and Estoppel Concur upon one Heir, who is liable to the Estoppel of his Ancestor, as he is to inherit his Land; but it is not so of a Remainder or Reversion in Tail. *Moor, Ca.* 402. *Briscot* and *Chamberlain*; and so is *Godb. Ca.* 189. If he in Reversion suffers a Recovery to divers Uses, his Heirs cannot plead, that his Father had nothing in the Land at the Time of the Recovery, for he is estopped to say he was not Tenant to the *Præcipe*.

Error was brought on a Fine in *Lancaster* by Tenant in Tail; the Tenant in the Writ of Error pleads in Bar a Common Recovery had against the Conusee of the Fine, with the Voucher of the Tenant in Tail; and it was resolved, that where Tenant in Tail comes in as Vouchee, he

he doth bar the Issue in the Writ of Error to reverse the erroneous Fine that he himself hath levied. *Moor* 499. *Barton and Lever*.

It is a necessary Form in pleading a Fine or Recovery, which is a Record to be pleaded in-tire; whereas a Feoffment may be pleaded of Parcel of the Land only. *Hob.* 24.

The Forms of pleading a Recovery. *Vid.* the Case of *Lincoln College*, 3 *Rep.*

If one plead a Record, he ought to shew a Record at the Day appointed. 2 *Roll. Rep.* 133.

One must plead a Recovery in an inferior Court specially, and not *quod cum recuperasset*, as in the superior Courts at *Westminster*. 1 *Keb.* 318.

See the Case of *Wakeman* against *Blackwell*, *Pasc.* 28 *Car.* 2. in *C. B.* 2 *Mod.* 70. 1 *Mod.* 219. 3 *Nelf. Abr.* 57.

A Deed, a Fine, and Recovery.

But one Conveyance, 184. before *Holt*.

IT is said, though there is no Tenant to the *Præcipe* in order to suffer a Common Recovery, yet after Length of Time, it shall be presumed there was a good one. *Mod. Cases in Law and Equity* 143.

A Papist, being Tenant in Tail, suffered a Common Recovery, and declared the Use to himself and his Heirs; and held it was not a Purchase within the *Stat.* of 11 *W.* 3. *Mod. Cases in Equity* 172.

Almost the same Manner is used in directing the Uses of a Recovery, as for the Uses of a Fine.

In prosecuting Recoveries, there is a fictitious Suit, or a real Action depending between the Parties, Demandant, Tenant, and Vouchee; the Demandant brings his Suit for the Land specified in the Declaration.

There is no need of setting forth the Lease and Release to make a Tenant to the *Præcipe*, because where a Person claims under a Recovery, it is supposed there was a good Tenant to the *Præcipe* till the Contrary is shewn; and rather than the Recovery shall fall, they shall be presumed as Tenants to the *Præcipe* by Disfeisin, especially if it be alledged in the Proceedings, that they are Tenants of free Tenement.

Note; When Indentures are made precedent, and afterwards a Recovery suffered, no parol Averment shall be taken that there were other Uses intended but what are in the Indenture, though nothing will till the Recovery is had.

An Averment may be taken on a subsequent Indenture, that other Uses were declared and limited before, and at the Time of the Recovery, than what are in the Indentures.

If the Uses of a Recovery be declared by a Deed subsequent thereto, a Stranger shall be admitted to plead other Uses before the Deed, but an Heir at Law shall not.

FORMS of the PROCESS for suing forth RECO- VERIES; with Obser- vations thereon.

A Præcipe for suing forth a Re- covery.

Southampton, ff.

Command C. D. Gent.
that he justly, &c.
render to E. F. Esq;
two Messuages, three
Gardens, two Hundred Acres of Land, sixty
Acres of Pasture, &c. with the Appurtenances
in, &c. which he claims, &c.

The Tenant in his proper Person voucheth
to Warranty F. G. Gent. who being present
voucheth over N. O.

Form

*Form of the Writ of Entry sur
Disseisin.*

GEORGE the Second, &c. to the Sheriff of T. Greeting. Command C. D. that justly, and without Delay, he render to E. F. two Messuages, three Gardens, &c. with the Appurtenances in F. which he claims to be his Right and Inheritance, and into which the said B. hath not an Entry, but after a Disseisin with *Humphry Hughes* thereof, unjustly and without a Judgment hath made to the said C. D. within thirty Years now last past, as he saith; and whereupon he complains, that the said C. D. deforced him; and unless he shall so do, and the said E. F. shall give you Security that his Suit shall be prosecuted, then summon by good Summoners the said E. F. that he be before our Justices at *Westminster* the Day, &c. to shew wherefore he will not; and have you there the Summons and this Writ, &c.

Witness, &c.

The Writ of Entry is returned thus:

Pledges of Prosecution { *John Doe,*
Richard Roe.

Summoners { *John Denn,*
Richard Fenn.

Entry

*Entry of a Recovery with single
Voucher.*

Southamp. ff. **E.** *F.* Esq; in his proper Person, demandeth against *C. D.* Gent. two Messuages, three Gardens, two Hundred Acres of Land, sixty Acres of Pasture, &c. with the Appurtenances in *F.* as his Right of Inheritance, and into which the said *B.* hath no Entry, but after a Disseisin, &c. and whereupon he declares, that he was seised of the said Tenement, with the Appurtenances, in his Demesne as of a Fee and Right, in Time of Peace, in the Time of our Lord the King that now is, by taking the Profits to the Value, &c. and into which, &c. and thereof he bringeth his Suit, &c. and the said *C. D.* in his proper Person, cometh and defendeth his Right when, &c. and thereupon voucheth *K. N.* to Warranty, who is present here in Court, in his proper Person, and freely warranteth to him the said Tenement, with the Appurtenances, &c. And hereupon the said *D.* demandeth against the said *K.* Tenant by his Warranty, the said Tenement, with the Appurtenances, in Manner aforesaid, &c. And whereupon he saith, that he was seised of the said Tenement, with the Appurtenances in his Demesne, as of Fee and Right in the Time of Peace, in the Time of our Lord the King that now is, by taking the Profits thereof to the Value, &c. into which, &c. and thereof he bringeth his Suit, &c. And the said *K.* the Tenant by his own Warranty, defend-

defendeth the Right when, &c. and saith, that the said *Hampb. Hughes* did not disseise the said *D.* of the said Tenement, with the Appurtenances, as the said *D.* by his Writ and Declaration aforesaid, doth above suppose; and thereof he putteth himself upon the Country, &c. And the said *D.* thereupon craveth Leave to imparle, and he hath it, &c. and afterwards the said *D.* cometh again here into Court this same Term, and the said *K.* although solemnly called, cometh not, but departeth in Contempt of the Court, and maketh Default; therefore it is adjudged, that the said *D.* do recover his Seisin against the said *B.* of the said Tenement, with the Appurtenances; and that the said *B.* have of the Land of the said *K.* to the Value, &c. and the said *K.* in Mercy, &c. and thereupon the said *D.* prays a Writ of our Lord the King to be directed to the Sheriff of the County aforesaid, to cause full Seisin of the Tenement aforesaid, with the Appurtenances, to be delivered to him; and it is granted him, returnable the Day, &c. At which Day the said *D.* cometh here into Court, in his proper Person, and the Sheriff, namely *F. S. Esq;* now returneth, that he, by Virtue of the said Writ to him directed on the Day of, &c. last past, caused full Seisin of the said Tenement, with the Appurtenances, to be delivered to the said *D.* as by the said Writ he was commanded.

*The Writ of Summons to the first
Vouchee.*

GEORGE the Second, by the Grace of
God of Great Britain, France and Ireland
King, Defender of the Faith, &c. To the She-
riff of ——— Greeting. Summons by good
Summoners, (the Vouchee) that he be before
our Justices at *Westminster*, (the Return) to
warrant to (the Tenant) two Messuages, and
eight Acres of Land, with the Appurtenances,
in which (the Demandant) in our Court before
our Justices at *Westminster* claimeth as his Right
by our Writ of Entry upon *Disseisin en le post*,
against the said (the Tenant) and whereof the
said (the Tenant) in our said Court hath vouch-
ed to warrant the said (the Vouchee) to be sum-
moned in our County, to warrant against the
said (the Demandant); and have you there the
Summoners and this Writ. *Witness* Sir *John*
Willes Knt. the Day of ——— in the ———
Year of our Reign.

Cooke.

*The Writ of Summons for the second
Vouchee.*

GEORGE the Second, &c. To the She-
riff of ——— Greeting. Summon by good
Summoners (the second Vouchee) that he be
before our Justices at *Westminster*, (the Return)
to warrant to the first Vouchee, whom (the
Tenant)

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Tenant) in our Court before our Justices at *Westminster*, heretofore did vouch to Warranty two Messuages, &c. (reciting the Parcels) which the Demandant in our said Court claimeth as his Right, by our Writ of Entry upon *Disseisin en le post*, against the said (the Tenant); and thereupon the said first Vouchee, in our said Court, hath further vouched the said (the second Vouchee) to be summoned in your County, to warrant against the said (the Demandant,) and have you there the Summoners and this Writ. *Witness* Sir *John Wiles* Knt. at *Westminster*, the — Day of — in the — Year of our Reign.

*Form of the Warrant of Attorney
for the Tenant with single Vou-
cher.*

Hants, to wit, **C**OMMAND *A. B.* Gent. that justly, and without Delay, he render to *E. F.* Gent. thirty Messuages, and six Gardens, with the Appurtenances in — which he claims, and so forth.

Taken and acknowledged the —
Day of — in the — Year.

With

With double Voucher.

Shropsh. to wit, **G.** *H.* whom *J. K.* called to Warranty, putteth in his Stead *L. O.* and *P. R.* jointly and severally against *T. S.* of a Plea of Land, &c.

Taken and acknowledg'd, &c.

With treble Voucher.

Shropsh. to wit, **G.** *H.* whom *J. K.* calleth to Warranty, putteth in his Stead *L. O.* and *P. R.* his Attornies, jointly and severally, against *T. S.* of a Plea of Land, &c.

Taken and acknowledg'd, &c.

Form of a Writ of Entry.

GEORGE the Second, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Middlesex* Greeting. Command *A. B.* that justly, and without Delay, he render to *C. D.* five Messuages, (*here reciting the Parcels*) with the Appurtenances in *F.* which he claims to be his Right and Inheritance, and into which the said *A.* hath not an Entry, but after a Disseisin which *Hugh Hunt* thereof unjustly and without Judgment hath made to the said *A. B.* within thirty Years now last past, as he saith;
4
and

and whereupon he complains, that the said *A. B.* deforced him, and unless he shall so do, and the said *C. D.* shall give you Security that his Suit shall be prosecuted; then summon by good Summoners the said *A. B.* that he be before our Justices at *Westminster*, in three Weeks from the Day of *St. Michael*, to shew wherefore he will not; and have you there the Summons and this Writ. *Witness Ourselves at Westminster the twentieth Day of July in the tenth Year of our Reign.*

Form of a Writ of Seisin.

GEORGE the Second, &c. To the Sheriff of *Middlesex* Greeting. Know you, that *C. D.* in our Court before our Justices at *Westminster*, hath recovered his Seisin against *A. B.* of five Messuages, &c. (*naming the Parcels*) with the Appurtenances in *C.* by our Writ of Entry upon a *Disseisin in le post*; therefore we command you, that, without Delay, you cause the said *C.* to have compleat Seisin of the said Tenements, with the Appurtenances; and do you forthwith make appear to our Justices at *Westminster* in what Manner you shall execute this Precept. And have you there this Writ.

Witness, &c.

The

The Return.

BY Virtue of this Writ to me directed, on the 11th Day of *February* in the within written Year, I caused full Seisin of the Tenements within specified, with the Appurtenances, to be delivered to the within-named *C. D.* as I am within commanded.

E. F. Esq; Sheriff.

This you return yourself.

The Entry of a Recovery with a single Voucher.

Shropsh. ff. **F***Rancis Plenty* Esq; in his proper Person, demandeth against *George Sellacre* Gent. four Messuages, six Gardens, seventy Acres of Land, nine Acres of Meadow, sixteen Acres of Pasture, twenty Acres of Furze and Heath, and Common of Pasture for all Manner of Cattle, and Common of Turbary, with the Appurtenances in *F.* as his Right and Inheritance, and into which the said *G.* hath no Entry, but after a Disseisin, which *Hugh Hunt* thereof, without Judgment, and unjustly hath made to the aforesaid *G.* within thirty Years, &c. and whereupon he declares, that he was seised of the said Tenements and Commons, with the Appurtenances in his Demesne, as of a Fee and Right, in Time of Peace, in the Time of our Lord the King that now is,

PART II.

A a

by

by taking the Profit thereof, to the Value, &c. and into which, &c. and thereof he brings his Suit, &c.

And the said G. in his proper Person, cometh and defendeth his Right when, &c. and thereupon voucheth *John Morland* to the Warranty, who is present here in Court in his proper Person, and freely warranteth to him the said Tenements and Commons, with the Appurtenances, &c. and hereupon the said J. demandeth against the said *John*, Tenant by his Warranty, the said Tenements and Commons, with the Appurtenances, in the Manner aforesaid, &c. And whereupon he saith, that he was seised of the said Tenements and Commons, with the Appurtenances in his Demesne, as of Fee and Right in Time of Peace, in the Time of our Lord the King that now is, by taking the Profits thereof to the Value, &c. and into which, &c. and thereof he bringeth Suit, &c. And the said *John* Tenant by his own Warranty defendeth his Right when, &c. and saith, that the said *Hugh* did not disseise the said *Francis* of the said Tenements and Commons, with the Appurtenances, as the said *Francis*, by his said Writ and Declaration, doth above suppose; and thereof he putteth himself upon the Country, &c.

And the said *Francis* thereupon craveth Leave to imparl; and he hath it, &c. And afterwards the said *Francis* cometh again here into Court this same Term, in his proper Person, and the said *John*, although solemnly called, cometh not again, but departed in Contempt of the Court, and maketh Default: Therefore it is adjudg'd, that the said *Francis* do recover his

Seisin,

Seisin, against the said *George*, of the said Tenements and Commons, with the Appurtenances, and that the said *George* have of the Land of the said *John* to the Value, &c. and the said *John* in Mercy, &c. and thereupon the said *John* prays a Writ of our Lord the King to be directed to the Sheriff of the County aforesaid, to cause full Seisin of the said Tenements and Commons, with the Appurtenances, to be delivered to him; and it is granted to him, returnable here in three Weeks from the Day of the *Holy Trinity*, &c. At which Day the said *Francis* cometh here into Court, in his proper Person; and the Sheriff (namely *L. M. Esq;*) now returneth, that he, by Virtue of the said Writ to him directed on the 8th Day of *June* last past, caused full Seisin of the said Tenements and Commons, with the Appurtenances, to be delivered to the said *Francis*, as by the said Writ he was commanded, &c.

The Form of a Writ of Summons.

GEORGE the Second, &c. To the Sheriff of *Middlesex* Greeting. Summon by good Summoners *G. H.* that he be before our Justices at *Westminster* on the *Octave* of *St. Martin*, to warrant to *J. K.* four Messuages, &c. (*here reciting the Parcels*) with the Appurtenances in C. which *L. M.* in our Court, before our Justices at *Westminster*, claims as his Right against the said *J. K.* by our Writ of Entry upon a *Disseisin in le Post*; and whereupon the said *J. K.* in our same Court, hath vouched the said *G. H.* to be summoned in your County, to war-

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rant against the said *J. K.* And have you there the Summoners and this Writ.

Witness Sir John Willes Knt. at Westminster the twenty-fourth Day of October in the tenth Year of our Reign.

Form of a Writ of Summons for the second Vouchee.

GEORGE the Second, &c. (*as before to the Words*) To warrant to *J. S.* whom *C. D.* heretofore in our Court, before our Justices at *Westminster*, hath vouched to Warranty, five Messuages, (*naming the Parcels*) with the Appurtenances in *F.* which *A. B.* in our Court, before our Justices at *Westminster*, claims as his Right by our Writ of Entry upon a *Disseisin en le post*; and whereupon the said *J. S.* in our said Court, hath vouched over the said *A. B.* (second Vouchee) to be summoned, &c. *ut supra.*

*Form of the Entry of the Mittimus and * Transcript.*

OUR Lord the King hath sent here to his Justices of the Bench, his Writ of *Mittimus*, closed together with the Tenor of his said

* Then in an Exemplifying Hand enter your Recovery; which being done, and your Writ returned, as above-mentioned, and the Attorney General's Hand indorsed upon the Writ of Entry, you exemplify the Recovery on a Skin of Parchment, with a 10 s. Stamp thereon.

Majesty's

Majesty's certain Writ of *Dedimus potestatem*, for receiving a Warrant of Attorney, and the Return thereof; and also the Warrant of Attorney taken therein in these Words: *George the Second, by the Grace of God King of Great Britain, France and Ireland, Defender of the Faith, &c.* To his Justices of the Bench Greeting. The Tenors, &c. So write the Mitimus and Transcript *verbatim* in small Hand.

The Form of an Exemplification.

GEORGE the Second, by the Grace of God of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To all to whom these our present Letters shall come Greeting. Know ye, that among the Pleas of Land inrolled at *Westminster* before Sir *John Willes* Knt. and his Brethren, our Justices of the Bench, of the Term of *St. Michael* in the tenth Year of our Reign, in the forty-fifth Roll it is thus contained: Heretofore, as it appears in the sixtieth Roll of the Term of *St. Hillary* last past, it is thus contained: *Lincolnshire, J. K. and L. M.* personally demand against *N. O. and P. Q.* the Manor, &c. [Going on here with the Entry you had made upon the Roll; and after the Words, *As he was commanded by the said Writ*, you conclude your Exemplification thus]: All and singular which Premises, at the Request of the said *J. and L.* by the Tenor of these Presents, we have commanded to be exemplified. In Testimony whereof, we have caused our Seal appointed

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• for sealing of Writs in the said Bench, to be affixed to these Presents.

*Witness Sir John Willes Knt. at Westminster
on the tenth Day of February in the tenth
Year of our Reign.*

*When it is by double Voucher, the
Tenant, instead of calling to War-
ranty the common Vouchee, calls
to Warranty that Person which
is vouched before the common
Vouchee, in this Manner.*

AND the said C. in his own Person comes and defends his Right when, &c. and thereupon vouches to Warranty J. H. Esq; who is present here in Court in his own Person, and freely warrants the said Tenements and Commons, with the Appurtenances, to him, &c. and hereupon the said A. demands against him the said J. H. Tenant by his Warranty, the said Tenements and Commons, with the Appurtenances, in Manner aforesaid, &c. and whereupon he declares, that he himself was seised of the said Tenements and Commons, with the Appurtenances in his Demesne, as of Fee and Right in Time of Peace, in the Reign of his present Majesty, by taking the Esplees thereof to the Value, &c. and into which, &c. and thereof he brings his Suit, &c.

And the said J. S. Tenant by his Warranty defends his Right when, &c. and further there-
upon

upon vouches to Warranty *Jacob Morland*, who is likewise present here in Court, in his own Person, and freely warrants the said Tenements and Commons, with the Appurtenances, to him, &c. and hereupon the said *A.* demands against the said *Jacob*, (so on as before.)

Treble and quadruple Vouchers differ from the first, only by adding them in the Manner before described.

A Precept to deliver Possession on a Recovery.

The Manor } To G. D. Steward to F. V. Bailiff of
of C. } the said Manor, Greeting.

K NOW you, that G. G. in this Court held, &c. by Judgment of the same Court hath recovered his Seisin against *B. G.* of, &c. (*here recite the Premises*) with their Appurtenances in, &c. within the Jurisdiction of the said Court, by the Default of the said *B. G.* therefore I command you, that, without Delay, you cause full Seisin of the Tenements aforesaid, with their Appurtenances, to be delivered to the said G. G. And have you there this Precept, and in what Manner you have executed the same. Dated, &c.

G. D. Steward (E. S.)

Note, That Indentures to lead the Uses of Feoffments, Fines and Recoveries, are Writings, that are indented, made by the Parties (before or after the Feoffment, Fine or Recovery,) to
A a 4 declare

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declare the Intent of the Parties how the Lands are to be settled by the Feoffment, Fine or Recovery. 1 Rep. 100, 175, 176. 2 Rep. 57. 5 Rep. 26. 9 Rep. 14, 15. 1 Inst. 7. b. Where no Uses are declared, the Feoffment, Fine, or Recovery shall enure to the Use of the Feoffor, Conusor, &c. but if the Conusee of a Fine levied doth pay Money to the Conusor at the Time of the Fine levied, and there is no Use declared to lead the Use of a Fine, the Law will construe the Fine to be levied of these Lands to the Use of the Conusee, or of him to whom the Fine is levied.

The Husband cannot declare the Use of the Wife's Land, without her Agreement, by Reason of the Inconveniencies that would ensue. 2 Rep. 57, 58.

The several Precedents follow to this Purpose.

The Form of a Deed to the Introduction of the Uses on a Recovery to be had with double Voucher.

THIS Indenture made, &c. between *A. B.* of the first Part, *C. D.* and *E. F.* of the second Part, and *G. H.* and *J. K.* of the third Part: Whereas the said *A. B.* by one Indenture of Bargain and Sale, dated the first Day of this Instant *December*, and inrolled in his Majesty's High Court of Chancery the tenth Day of the same Month, made between the said *A. B.* of the one Part, and the said *C. D.* and *E. F.* of the other Part, hath granted, bargained, and fold

sold to the said *C. D.* and *E. F.* all that, &c. and the Reversion and Reversions, Remainder and Remainders thereof, and of every Part or Parcel thereof, to have and to hold the said, &c. and all and every the said Premisses, with the Appurtenances, unto the said *C. D.* and *E. F.* their Heirs and Assigns for ever, to the only proper and absolute Use and Behoof of the said *C. D.* and *E. F.* their Heirs and Assigns for ever; to the End, Intent and Purpose, that the said *C. D.* and *E. F.* might thereby, and by Force of the Statute for transferring Uses into Possessions, become Tenants of the Freehold of all and every the Premisses, that a good and perfect Common Recovery, with double Vouchers, may be thereof had and executed. *Now this Indenture witnesseth*, and it is covenanted, concluded, and fully agreed by and between all the said Parties to these Presents, for them, and every of them, their and every of their Heirs, that they the said *C. D.* and *E. F.* shall and will permit and suffer the said *G. H.* and *J. K.* before the End of, &c. next ensuing the Date of these Presents, by Writ or Writs of Entry *sur Disseisin en le Post*, to be sued forth and obtained out of his Majesty's High Court of Chancery, and returnable before the Justices of his Majesty's Court of Common Pleas at *Westminster*, in the Names of the said *G. H.* and *J. K.* Demandants, against the said *C. D.* and *E. F.* Tenants, or the Survivor of them, to recover to them the said *G. H.* and *J. K.* and their Heirs, in due Form of Law, according to the usual Form of Common Recoveries for Assurances of Lands, Tenements, and Hereditaments, against the said *C. D.* and
E. F.

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E. F. the said, &c. with their and every of their Appurtenances, by some Name or Names in the said Writ of Recovery to be contained in; and to which said Writ of Recovery the said *C. D.* and *E. F.* shall appear *gratis* in their proper Persons; and after Defence made, shall vouch to Warranty the said *A. B.* who shall likewise thereupon appear and enter into the Warranty; and after Defence made, shall vouch to Warranty the common Vouchee, who shall likewise appear and enter into Warranty, and after make Default in Contempt of the Court; to the End, that a perfect Common Recovery may be had and executed, according to the Course of Common Recoveries of the, &c. and all and singular other the Premises, with the Appurtenances; which Recovery, so as aforesaid, or in any other Manner to be had, suffered, and executed by and between the said Parties to these Presents, or any of them the said, &c. before the, &c. and the Recoverors in the said Recovery or Recoveries, shall, immediately from and after the suffering and executing thereof, stand and be seised of the said, &c. to the Uses, Intents, and Purposes hereafter specified, expressed, and declared; and to no other Use, Intent, or Purpose whatsoever.

A Covenant to suffer a Recovery with double Voucher, the Tenant to the Præcipe being already made by Deed.

THIS *Indenture* made, &c. between C. D. of the first Part, E. F. of the second Part, and G. H. of the third Part, witnesseth, That for divers good Causes and Considerations, it is covenanted, granted, concluded, and agreed by and between all the said Parties to these Presents, in Manner and Form following, That the said G. H. shall, before the End of next *Hillary* Term, purchase and sue forth out of the High Court of Chancery one original Writ of Entry *sur Disseisin en le pest*, against the said E. F. of the second Part, returnable before the Justices of his Majesty's Court of Common Pleas at *Westminster*, at a Day certain in the said Writ to be mentioned; and by the said Writ shall demand against the said E. F. all that, &c. setting forth the Particulars, and where situate, by such Names, Quality, and Number of Acres, as by the said G. H. and his Counsel learned in the Law shall be devised, advised, or required; unto which said Writ, the said C. D. shall appear *gratis*, and take upon him the Tenancy of all and every the said, &c. and other the Premises, with the Appurtenances, and shall vouch to Warranty the said D. E. who shall appear *gratis*, and who shall vouch to Warranty the common Vouchee, who shall like-

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likewise appear *gratis*, and enter into the Warranty; and after Imparlance, make Default in Contempt of the Court; so that Judgment shall be given, that the said *G. H.* shall recover the said, &c. in the said Writ to be contained, against the said *E. F.* and that the said *E. F.* shall recover over in Value against the common Vouchee; and that Execution of the said Recovery so to be had, shall be made according to the Form of Common Recoveries in such Cases used and accustomed; and that the said *G. H. E. F.* and *C. D.* and every of them, shall and will do, execute, perform, and suffer all and every such Act and Acts, Thing and Things whatsoever, as shall be necessary and expedient for the Prosecution of the said Recovery, and the Execution thereof, according to the Form and Order of Common Recoveries with double Vouchers in such Cases used.

A Deed to make a Tenant to the Freehold, and to suffer a Common Recovery; the Uses whereof are declared, &c.

THIS Indenture Tripartite made, &c. between *A. B.* of, &c. of the first Part, *C. D.* of, &c. of the second Part, and *E. F.* of, &c. of the third Part, witnesseth, That the said *A. B.* for and in Consideration of the Sum of ten Shillings of, &c. to him in Hand paid by the said *C. D.* the Receipt whereof is hereby acknowledged, he the said *A. B.* hath granted,

ed, bargained, sold, confirmed, and by these Presents doth grant, &c. unto the said *C. D.* his Heirs and Assigns, all that Messuage and Tenement erected and built by *K. K.* late Citizen and Grocer of *London*, deceased, situate and being in, &c. as the same adjoineth to a new-built Brick Messuage, now or late of, &c. on the East or Easterly Part thereof, and adjoineth to, &c. on the West or Westerly Part thereof; which said Messuage or Tenement herein mentioned to be granted, now is, or lately was called or known by the Name or Sign of, &c. and was once in the Tenure or Occupation of, &c. and was built and erected by, &c. upon a Toft or Piece of Ground that was convey'd, or mention'd to be convey'd to the said, &c. and his Heirs by, &c. and which, by good Conveyances and Assurances in the Law, was since conveyed to the said *A. B.* his Heirs and Assigns, and all and singular the Edifices, Buildings, Rooms, Chambers, Shops, Cellars, Solars, Lights, Easements, Ways, Waters, Water-Courses, Emoluments, and other Advantages, Hereditaments, and Appurtenances whatsoever to the said Messuage or Tenement before mentioned to be hereby granted, or to any Part or Parcel thereof in any wise appertaining or belonging; or to or with the same, or any Part or Parcel thereof, now or heretofore used, held, letten, set, occupied, or accepted, reputed, taken, or known as Part or Parcel, or Member thereof, or as belonging thereunto: And also the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premisses, and of every Part thereof: And also all the Estate, Right, Title,

Title, Interest, Claim, and Demand whatsoever of him the said *A. B.* of, in and to the said Messuage, Tenement, and Premises above-mentioned, and of, in and to every Part and Parcel thereof, with the Appurtenances; to have and to hold all and singular the said Messuage, Tenement, and Premises above-mentioned to be granted, and every Part and Parcel thereof, with the Appurtenances, to the said *C. D.* his Heirs and Assigns for ever, to the Intent to make him perfect Tenant of the Freehold of the said Premises; and to this further Intent and Purpose, that the said *C. D.* shall and will, before the End of *Easter* Term next coming, permit and suffer the said *E. F.* to sue forth and prosecute one Writ of Entry *sur Disseisin en le post*, returnable before his Majesty's Justices of his Court of Common Pleas at *Westminster*, thereby demanding against the said *C. D.* the said Messuage, Tenement, and Premises hereby before mention'd to be granted, by such convenient Names and Descriptions, as in that Behalf shall be thought fit and convenient, unto and upon which said Writ of Entry so to be brought, the said *C. D.* shall appear and vouch to Warranty the said *A. B.* who shall also appear in Person, and enter into the said Warranty, and vouch over the common Vouchee, who shall likewise appear and imparl, and afterwards make Default; to the End one perfect Common Recovery shall and may be had of the said Messuage, Tenement, and Premises above-mentioned, according to the usual Form of Common Recoveries for Assurance of Lands, in such Cases used and accustomed; and the same Recovery shall

shall be also executed by one Writ of *Habere facias Seisinam* accordingly.

And it is covenanted, granted, concluded, and agreed upon, by and between the said Parties to these Presents, and hereby so declared, that the said Recovery, so as aforesaid, or in any other Manner to be had and suffer'd, and all and every Fine and Fines, Recovery and Recoveries, Assurance and Assurances, Conveyance and Conveyances already had, made, levy'd, suffer'd, executed or acknowledg'd, or at any Time hereafter to be had, &c. of the said Premisses above-mentioned, or any Part thereof, either alone by itself, or jointly with any other Lands or Tenements, by and between the said Parties to these Presents, or by or between them, or any of them, and any other Person or Persons whatsoever, as for and concerning all and singular the said Messuage, Tenement, and Premisses above-mentioned, and every Part and Parcel thereof, with the Appurtenances, shall be and enure, and shall be esteemed, adjudged, and taken to be and enure to the only proper Use and Behoof of the said *A. B.* his Heirs and Assigns for ever; and to and for none other Use, Intent, or Purpose whatsoever.

In Witness, &c.

A Deed

*A Deed to suffer a Recovery, and
to declare the Uses thereof, by
Way of Lease and Release.*

THIS *Indenture Quintuepartite* made, &c. between the Right Honourable K. Earl of S. of the first Part, Sir A. B. of, &c. Bart. and C. D. of, &c. Gent. (Trustees appointed by a late Act of Parliament, intituled, *An Act for better securing the Portions, Debts, and Legacies given and owing by K. late Earl of S. of the second Part, E. F. of, &c. Gent. of the third Part, G. H. of, &c. Esq; of the fourth Part, and J. K. of, &c. Esq; of the fifth Part,*) witnesseth, That for the barring of all Estates-tail, and Reversions and Remainders thereupon expectant of and in the Messuage, Lands, Tenements, and Hereditaments herein after mentioned, and for settling the same to and for the Uses, Intents, and Purposes herein after expressed; and for and in Consideration of the Sum of 100 s. of, &c. to the said K. Earl of S. Sir A. B. C. D. E. F. in Hand paid by the said J. K. at or before the Sealing and Delivery of these Presents, the Receipt whereof is hereby acknowledged; and for divers other good Causes and Considerations, them the said K. Earl of S. Sir A. B. C. D. and E. F. thereunto especially moving, they the said K. Earl of S. Sir A. B. C. D. and E. F. have, and each and every of them hath bargain'd, sold, aliened, releas'd and confirmed, and by these Presents do, and each and every of them doth bargain, &c. unto the said J. K.

his Heirs and Assigns, all that Messuage or Tenement called, &c. lying and being, &c. together with all Houses, &c. And also all that, &c. now or late in the Tenure or Occupation of, &c. together with all Liberties, Franchises, Services, Profits, Commodities, and Appurtenances whatsoever to the said Messuage, Lands, Hereditaments, and Premises any ways belonging and appertaining, and the Reversion and Reversions, Remainder and Remainders, Rents, Issues, and Profits of all and singular the said Messuage, Lands, Hereditaments and Premises, and every Part and Parcel thereof, (all which said Messuage, Lands, Hereditaments and Premises, are now in the actual Possession of the said J. K. by Virtue of a Bargain and Sale, &c.) and all the Estate, Right, Title, Interest, Trust, Property, Claim, and Demand whatsoever of them the said K. Earl of S. Sir A. B. C. D. and E. F. and of each and every of them, of, in, and to the said Messuage, Lands, Hereditaments and Premises, and every Part and Parcel thereof; to have and to hold the said Messuage, Lands, Hereditaments, and Premises mentioned to be hereby released and confirmed, and every Part and Parcel thereof, with their and every of their Appurtenances, unto the said J. K. his Heirs and Assigns, to the Use and Behoof of the said J. K. his Heirs and Assigns for ever; to the Intent and Purpose only, that he the said J. K. may become a perfect Tenant of the Freehold of the said Premises; to the End, that one or more Common Recovery or Recoveries may be thereof had or suffer'd, and in such Manner as is herein after expressed: For which Purpose it is hereby declared and expressed, and agreed

by and between all the said Parties to these Presents, That it shall and may be lawful to and for the said G. T. at the Cost and Charges in the Law of the said K. Earl of S. before the End of this present *Michaelmas* Term, to sue and prosecute, out of his Majesty's High Court of Chancery, one or more Writ or Writs of Entry *sur Disseisin en le post*, returnable before the Justices of the Court of Common Pleas at *Westminster* on some Return-Day of the same Term; and by such Writ or Writs, respectively to demand all and every the said Messuage, Lands, Hereditaments and Premises, against the said J. K. by such Descriptions as shall be thought meet: To which said Writ or Writs the said J. K. shall appear *gratis*, and vouch to Warranty the said K. Earl of S. who shall appear *gratis* in his own Person, or by his Attorney thereto lawfully authorized, and enter into the Warranty, and vouch over to Warranty the common Vouchee of the said Court, who shall appear *gratis*, and enter into the Warranty and imparl; and after Imparlance shall make Default, and depart in Contempt of the Court, so as Judgment thereupon may be respectively had and given for the said G. T. to recover the said Messuage, Lands, Hereditaments, and Premises against the said J. K. and for him to recover in Value against the said K. Earl of S. and for him to recover in Value against the said common Vouchee, and that Execution may be thereupon respectively awarded accordingly, and all and every other Thing and Things may be done and executed needful and requisite for the suffering and perfecting one or more such Common Recovery or Recoveries, with Vouchers as
afore-

aforesaid; according to the usual Course of common Recoveries in such Cases had. And it is hereby declared and agreed, by and between all the said Parties to these Presents, that after the said common Recovery or Recoveries so as aforesaid, or in any other Manner, or at any other Time or Times had, suffered and executed, or to be had, suffered and executed, such common Recovery or Recoveries shall be and enure, and shall be adjudged, esteemed and taken, and so are and were meant and intended to be and enure. And the said Recoveror, in the said respective Recovery or Recoveries, and his Heirs shall stand and be seised of all and every the said Messuage, Lands, Hereditaments, and Premises abovementioned, to be hereby released and confirmed to the Use and Behoof of the said K. Earl of S. his Heirs and Assigns for ever, and to and for none other Use, Intent, or Purpose whatsoever.

In Witness, &c.

To suffer a Recovery in a Court-Baron by Plaintiff, &c.

THIS Indenture made, &c. between E. F. on the one Part, and G. H. on the other Part, witnesseth, That it is covenanted, granted, concluded and agreed by and between the said Parties to these Presents, that the said E. F. before the, &c. next ensuing the Date hereof shall permit and suffer the said G. H. to affirm and pursue against the said E. F. in the Court Baron of the Manor of S. in the County of C.

one Plaint in the Nature of a Writ of Entry *sur Disseisin en le post*, of all and singular that his Messuage, and Fifty Acres of Pasture with the Appurtenances adjoining thereto, abutting, &c. situate, lying and being within the said Manor of *S.* which said Messuage the said *E. F.* late had in Remainder of the Surrender of *G. H.* his Father, by the Name of, &c. as in the Copy of Court-Roll, as by the Court-Roll of the general Court of the said Manor holden at *S.* on the 30th Day of, &c. last past, before the Date hereof among other Things more fully it doth and may appear; and that the said Plaint shall be affirmed, entered and pursued, of all and every the Premises with the Appurtenances in *S.* within the Jurisdiction of the Court of the said Manor of *S.* To and upon which Plaint to be affirmed, entered and pursued as aforesaid, he the said *E. F.* shall appear in his own Person, or by his Attorney lawfully authorised in that Behalf, and shall make his Defence thereunto according to Law, and vouch to Warranty, of and for the Premises, one *F. M.* who shall appear and enter into the Warranty, and after make Default according to the Manner and Form of common Recoveries in Writs of Entry *sur Disseisin en le post*; whereby the said *G. H.* shall have Judgment to recover the said Messuage, Fifty Acres of Meadow, and other the Premises, against the said *E. F.* and the said *E. F.* to recover over in Value against the said *F. M.* according to the Manner and Form of common Recoveries for Lands and Tenements; which said Recovery the said *E. F.* shall suffer to be executed by Precept or Warrant out of the said Court,

in the Nature of a Writ of *Habere fac. seisin.* according to the Order or Manner of the Common Law. And it is further covenanted, granted, concluded and agreed by and between the said Parties, that the said Recovery and the Estate of the Premisses to be had, obtained and recovered thereby, or by Reason thereof, shall be to the Use of the said G. H. his Heirs and Assigns for ever, according to the Custom of the said Manner, and to no other Use, Intent or Purpose whatsoever.

In Witness, &c.

*Indenture of Release for making a
Tenant to the Freehold, in Order
for suffering a Recovery.*

THIS Indenture Tripartite made the 17th Day of May, &c. between G. H. of, &c. Esq; of the first Part, J. K. of, &c. Gent. of the second Part, and L. M. of, &c. Gent. on the third Part, witnesseth, That for the Docking and Barring of all Estates-tail of and in the Messuage or Tenement, and all other the Hereditaments here mentioned, with their Appurtenances, and all and every the Remainder and Remainders thereupon dependant or expectant, and for settling the said Messuage or Tenement, and other the Hereditaments with their Appurtenances to, for and upon the Uses, Intents and Purposes herein after particularly expressed and declared. And for and in Consideration of Five Shillings of lawful *British* Money to the said G. H. in Hand paid by the

saïd *L. M.* at or before the Sealing and Delivery of these Presents, the Receipt whereof is hereby acknowledged; and for other good Causes and Considerations hereunto moving, he the saïd *G. H.* hath bargained, sold and released, and by these Presents doth bargain, sell and release unto the saïd *L. M.* (in his actual Possession now being, by Virtue of a Bargain and Sale thereof to him made by the saïd *G. H.* by Indenture dated the Day next before the Day of the Date of these Presents, for one Year from the Day next before the Date of the same Indenture, in Consideration of Five Shillings of lawful Money, paid by the saïd *L. M.* to the saïd *G. H.* and by the Force of the Statute for transferring Uses into Possession) and to his Heirs, all that Messuage, &c. and all and every the Cellars, Solars, Chambers, Rooms, Stables, Outhouses, Ways, Yards, Grounds, Passages, Waters, Water-courses, Lights, Easements, Profits, Commodities, Hereditaments and Appurtenances whatsoever, to the saïd Messuage or Tenement belonging, or in any wise appertaining, or therewith or with any Part thereof demised, used, let, occupied or enjoyed, or accepted, reputed, taken, or known to be Part, Parcel, or Member thereof, &c. the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits of all and singular the same Premises, and every Part and Parcel thereof, with their and every of their Appurtenances; and also all the Estate, Right, Title, Interest, Claim and Demand of him the saïd *G. H.* of, in, to, or out of the saïd hereby released Premises, with the Appurtenances, or any Part or Parcel thereof in
any

any wise howsoever, to have and to hold the said Messuage or Tenement, and all and singular other the Premisses herein before mentioned, or intended to be hereby released, with their Appurtenances, unto the said *L. M.* his Heirs and Assigns, to the Use and Behalf of him the said *L. M.* his Heirs and Assigns for ever; yet nevertheless, to the Intent that by Virtue of the said Indenture of Bargain and Sale, and of these Presents, he the said *L. M.* may be and become a good and a perfect Tenant of the immediate Freehold and Inheritance of all and singular the said hereby released Premisses with their Appurtenances, against whom a common Recovery may be had, perfected and executed in such Manner as is herein after mentioned. And for that Purpose it is covenanted, concluded and agreed by and between all the said Parties to these Presents, that before the End of *Michaelmas* Term next ensuing the Date of these Presents, at the proper Costs and Charges of the said *G. H.* one Writ of Entry *sur Disseisin en le post* shall or may be brought, commenced or prosecuted returnable before his Majesty's Justices of the Court of Common Pleas at *Westminster*, in the Name of the said *G. H.* as Plaintiff or Demandant against the said *L. M.* as Tenant, whereby the said *G. H.* shall demand against the said *L. M.* the said Messuage or Tenement, and all and singular other the said hereby released Premisses, with their Appurtenances, by such apt and convenient Names and Descriptions, as shall be proper in that Behalf, to which Writ the said *L. M.* shall appear *gratis* in his own proper Person, or by his Attorney or At-

tornies lawfully authoris'd, and shall and will vouch or call to warrant the same Premises, the said G. H. who shall also appear *gratis* in his own proper Person, or by his Attorney or Attornies lawfully authoris'd, and shall and will enter into the said Warranty, and vouch over to warrant the same Premises the common Vouchee, who shall thereupon appear and enter into the same Warranty, and after Imparlance make Default, and such further and other Proceedings be had upon the said Writ, and all the said Parties shall so demean themselves therein, that one good and perfect Recovery with double Voucher shall or may be had, suffered, perfected and executed, of, for, or upon all and singular the said hereby released Premises with their Appurtenances in all Things according to the usual Course, Order, and Form of common Recoveries, with double Voucher, for Assurance of Land in such Cases used. And it is further covenanted, concluded, declared and agreed, by and between all the said Parties to these Presents, for themselves and their Heirs; and it is their true Intent and Meaning, that the said common Recovery so as aforesaid, or in any other Manner to be had, suffered or executed, of, for, or upon the said hereby released Premises, or any Part thereof, and the full Force, Effect and Execution thereof, and also all and every other common Recovery and Recoveries, Fine and Fines, and other Assurances had, made, levied, suffered or executed, or to be had, made, levied, suffered and executed, of, for, or upon the Premises, or any Part thereof, to which the said Parties to these Presents, or any of them is, or are, or shall be

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Party or Parties, or Privy, shall be, and enure, and shall be construed, expounded, deemed, and taken to be and enure to the only proper Use and Behoof of the said *G. H.* his Heirs and Assigns for ever, and to and for no other Use, Intent or Purpose whatsoever.

In Witness, &c.

A Deed to suffer a Recovery in a Court-Baron by Plaintiff.

THIS Indenture made, &c. between *Abraham Cross* on the one Part, and *Charles Cook* on the other Part, witnesseth, That it is covenanted, granted, concluded and agreed by and between the said Parties to these Presents, that the said *Abraham Cross* on or before the, &c. next ensuing the Date hereof, shall permit and suffer the said *Charles Cook* to affirm, enter and pursue against him the said *Abraham Cross*, in the Court-Baron of the Manor of *C.* in the County of *K.* one Plaintiff in the Nature of a Writ of Entry *sur Disseisin en le Poſt*, of all and singular that his Messuage, and Forty Acres of Meadow with the Appurtenances adjoining thereunto, abutting, &c. situate, lying and being within the Manor of *C.* which said Messuage the said *Abraham Cross* late had in Remainder of the Surrender of *Charles Cross* his Father, by the Name of, &c. as in and by the Copy of Court-Roll of the general Court-Leet and Baron of the said Manor, holden at *C.* aforesaid, on the 26th Day of, &c. last past, before the Date hereof, among other Things, more fully it doth and may appear; and that
the

the said Plaintiff shall be affirmed, entered and pursued of all and every the Premises with the Appurtenances in C. aforesaid, within the Jurisdiction of the Court of the said Manor of C. to and upon which Plaintiff to be affirmed, entered and pursued as aforesaid, he the said *Abraham Cross* shall appear in his own Person, or by his Attorney lawfully authorised in that Behalf, and shall make his Defence thereunto according to Law, and vouch to Warranty of and for the Premises, one *F. M.* who shall appear and enter into the Warranty, and after make Default according to the Manner and Form of common Recoveries in Writs of Entry *sur Disseisin en le Poſt*; whereby the said *Charles Cook* shall have Judgment to recover the said Messuage, and Forty Acres of Meadow, and other the Premises, against the said *Abraham Cross*, and the said *Abraham Cross* to recover over in Value against the said *F. M.* according to the Manner and Form of common Recoveries for Lands and Tenements; which said Recovery the said *Abraham Cross* shall suffer to be executed by Precept or Warrant out of the said Court, in the Nature of a Writ of *Habere fac' seisinam*, according to the Order or Manner of the Common Law. And it is further covenanted, granted, concluded and agreed, by and between the said Parties, that the said Recovery and the Estate of the Premises to be had, obtained, or recovered thereby, or by Reason thereof, shall be to the Use of the said *Charles Cook*, his Heirs and Assigns for ever, according to the Custom of the said Manor, and to no other Use, Intent or Purpose whatsoever.

In Witness, &c.

Form

*Form of a Recovery of Copyhold
Lands on a Disseisin, &c.*

The Manor } The Court-Baron of F. G. Esq;
of Gulton. } held at *Gulton* aforesaid, in and
for the Manor aforesaid, &c.

TO this Court came G. G. Gent. in his own proper Person, and in open Court demandeth against B. G. then present in Court, in a Plea of Land, to wit, of Two Messuages, &c. (here recite the Particulars) within the Jurisdiction of the Court, and made Protestation to prosecute his Suit in this Court, in Form and Nature of the King's Writ *de Ingressu super Disseisinam en le post*, at Common Law, according to the Custom of the said Manor, and found Pledges to prosecute his Suit aforesaid, to wit, F. B. and B. B. and prayed Process to be made thereon, according to the Custom of the said Manor, against the said B. G. directed, &c. returnable, &c. and it was granted him. And the said B. G. being then present in the same Court, appeared to the said Plea *gratis*; and upon this the aforesaid G. G. in his proper Person demandeth of the said B. G. the Tenements aforesaid, with their Appurtenances in, &c. within the Jurisdiction of this Court, as his Right and Inheritance according to the Custom of the Manor aforesaid, and into which the said B. G. hath no Entry but after the Disseisin which F. H. thereof unjustly and without Judgment hath made, to the said G. G. within thirty

ty Years last past; and whereupon he declares that he was seised of the said Tenement, with the Appurtenances, in his Demesne as of Fee and Right in Time of Peace, and in the Year of our Lord the King that now is, by taking the Profits thereof to the Value, &c. and into which, &c. and therefore he brings this Suit. And upon this the said *B. G.* in his proper Person cometh and defendeth his Right, when, &c. and thereupon voucheth *F. M.* to Warranty, who is present here in Court, and freely warranteth to him the said Tenements with their Appurtenances; and hereupon the aforesaid *G. G.* demandeth against the said *F. M.* Tenant by his Warranty, the said Tenements with their Appurtenances in Manner aforesaid; and whereupon he saith, that he was seised of the said Tenements, with their Appurtenances, in his Demesne as of Fee and Right, at the Will of the Lord, according to the Custom of the said Manor, in the Time of Peace in the Time of the Lord the King that now is, by taking the Profits thereof, to the Value, &c. into which, &c. and thereof he bringeth his Suit, &c. and upon this *F. M.* Tenant by his Warranty, comes and defends his Right, when, &c. And thereupon vouches over to Warranty *H. B.* who is present here in Court in his own proper Person, and freely warrants to him the said Tenements with their Appurtenances; and hereupon the said *G. G.* demandeth against the said *H. B.* Tenant by his Warranty, &c. (as in the other Count); and hereupon the said *H. B.* Tenant by his Warranty aforesaid, in his proper Person came into this Court, and defendeth his Right, when, &c. and saith that the said

F. H.

F. H. did not Disseise the said *G. G.* of the said Tenements with their Appurtenances, as the said *G. G.* above supposes by his Writ and Declaration; and thereof he puts himself upon the Homage of the Manor-Court aforesaid; and the said *G. G.* thereupon craveth Leave to Imparl unto Two o'Clock in the Afternoon of the same Day; and he hath it, &c. and the same Hour is given to the said *H. B.* &c. And afterwards, to wit, at Two o'Clock in the Afternoon of the same Day, the said *G. G.* in his proper Person came again into this Court, and the said *H. B.* although he was solemnly called, came not again, but departed in Contempt of the Court, and maketh Default; therefore, according to the Custom of this Manor, it is adjudged by this Court, that the aforesaid *G. G.* do recover his Seisin against the said *B. G.* of the said Tenements with their Appurtenances, to have and to hold the same unto him the said *G. G.* and his Heirs, at the Will of the Lord according to the Custom of this Manor, quietly from the aforesaid *B. G.* and his Heirs, for ever; and that the said *B. G.* have of the Lands of *F. M.* aforesaid, to the Value, &c. within, &c. and be the said *H. B.* amerced, &c. And upon this the aforesaid *G. G.* prays Process to be directed to the Officer of the Manor-Court aforesaid, to cause full Seisin of the said Tenements with their Appurtenances to be delivered to him; and the same is granted to him, returnable here forthwith. And afterwards, to wit, the same Day, came here into Court the Officer of the Court, to wit, *F. V.* Bailiff thereof, and returned the aforesaid Process to him directed executed in all Points and Forms of Law,

Law, to wit, that he, by Virtue of the said Precept to him directed on this Day, delivered full Seisin of all the Tenements aforesaid, with their Appurtenances, to the said G. G. by him recovered, as he was by the said Precept commanded. And thereupon now to this Court came the said G. G. in his own Person, and humbly craved of the Lord of the said Manor to be admitted to the said Premisses, with their Appurtenances, according to the Force and Effect of the Recovery aforesaid; and the Lord of the Manor aforesaid, in full Execution of the said Recovery, and according to the Custom of the Manor aforesaid, by his Steward aforesaid, did deliver Seisin thereof by the Rod, to have and to hold all and singular the Premisses aforesaid, with the Appurtenances, to the said G. G. his Heirs and Assigns, for ever, of the Lord, by the Rod at the Will of the Lord, according to the Custom of the Manor aforesaid, by Fealty, Suit of Court, Custom, and yearly Rent, and all other Services, heretofore owing, and of Right accustomed, so alway saving the Right of the Lord, he is admitted Tenant thereto, and gave therefore to the Lord the Sum of twenty Shillings for a Fine, and did Fealty. And afterward, to wit, at the same Court, came the aforesaid B. G. F. M. and H. B. in their own proper Persons, and in full Court surrendered by Rod into the Hands of the Lord of this Manor, by the Hands of the Steward aforesaid, all and singular the premisses aforesaid, with their Appurtenances, to the Use and Behoof of the said G. G. his Heirs and Assigns, for ever, and each for himself, his Heirs, Executors, and Administrators, them and every of them, hath
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separately and respectively, fully, freely, and absolutely remised, released, and for ever quitclaim to him the said G. G. his Heirs and Assigns in full and peaceable Possession and Seisin thereof, all the Right, Estate, Interest, Title, Claim and Demand of them the said B. G. F. M. and H. B. or any or either of them, of, on, or to all and singular the Premises aforesaid, with their Appurtenances, or any Part or Parcel thereof, together with all and all manner of Errors, Cause and Causes of Error, Misprision, Defect, and erroneous Proceedings whatsoever, and howsoever, had committed, omitted, permitted, or perpetrated in Plaint, Plea, Process, Judgment, and Execution aforesaid, or any or either of them. [If the Recovery be to enure to Uses, then the Recoverer must surrender to those Uses, and the Trustees must be admitted in Trust according to the common Method of Surrender and Admittance.]

A Deed to lead the Uses of a Recovery.

THIS Indenture Tripartite made, &c. between C. D. of &c. of the first Part, and E. F. G. H. of &c. of the second Part, and J. K. and L. M. of, &c. of the third Part, witnesseth, that the said C. D. for the docking, barring, and cutting of all Estates-Tail, and Remainders in Tail, of and in the Messuage, Tenements, Lands and Hereditaments herein after mentioned, and for the settling and assuring of the same, to and for the Uses, Intents and Purposes herein after limited, expressed and declared; and in Consideration of five Shillings,

to him in Hand paid by the said *E. F.* and *G. H.* the Receipt whereof is hereby acknowledged, and for divers other good Causes and Considerations, him the said *C. D.* in this Behalf moving, hath granted, bargained, and sold, released and confirmed, and by these Presents doth grant, bargain and sell, &c. unto the said *E. F.* and *G. H.* (in their actual Possessions) now being, by Virtue of a Bargain and Sale to them thereof made, for one whole Year, &c. all that Messuage and Tenement, and all those Lands, &c. situate, lying and being, &c. and all Ways, &c. and the Reversions, Remainders, Rents and Services thereof, or Incidents thereto, to have and to hold, the said Messuage, Tenements, Lands and Premisses abovementioned, and every Part and Parcel thereof, with the Appurtenances, unto the said *E. F.* and *G. H.* and to their Heirs for ever, to the Intent and Purpose that the said *E. F.* and *G. H.* shall and may become perfect Tenants of the Freehold of the said Messuage, Lands and Premisses, and shall and may stand seised thereof, until a good and perfect common Recovery may be duly had with double Vouchers over, had, suffered and executed of the said Messuage, Tenements, Lands and Premisses, according to the usual Course of common Recoveries, for the Assurance of Lands and Tenements in such Cases used and accustomed. And thereupon it is covenanted, concluded and agreed by and between all the said Parties to these Presents, for themselves, and every of their Heirs, by these Presents, in manner following; (that is to say) That the said *E. F.* and *G. H.* shall and will before the End of *Michaelmas* Term next ensuing, permit and suffer the said

J. K.

J. K. and L. M. to sue forth and prosecute against them the said E. F. and G. H. one Writ of Entry *sur Disseisin en le post*, returnable before his Majesty's Justices of the Court of Common Pleas at *Westminster*, thereby demanding against the said E. F. and G. H. the said Messuage, Tenement, Lands, Hereditaments and Premises herein beforementioned, by such Name and Names, Number of Acres, Quantities, Qualities, Terms and Descriptions, in the said Writ to be contained, and in such Manner and Form, as by Counsel learned in the Law shall be advised; unto and upon which said Writ of Entry so to be prosecuted and sued forth, the said E. F. and G. H. shall appear *gratis*, and vouch to Warranty the said C. D. which said C. D. shall appear either in Person or by Attorney lawfully authorised, and enter into Warranty, and after his Entry into Warranty, shall vouch to Warranty the common Vouchee, who shall likewise appear and imparl, and afterwards make Default, and depart in Contempt of the Court, so that Judgment may be thereupon had, and given for the said J. K. and L. M. to recover the said Messuage or Tenement, Lands, Hereditaments, and Premises against the said E. F. and G. H. and for the said E. F. and G. H. to recover in Value against the said C. D. and for the said C. D. to recover in Value against the common Vouchee, to the End one perfect common Recovery, with double Voucher, may be thereupon had and recovered, and all and every other Thing and Things to be done and perfected, needful and convenient for the having and suffering the same Recovery, according to the

Course of common Recoveries in such Cases used; and the same Recovery is also to be executed by one Writ of *Habere facias Seisnam* accordingly. And it is hereby further covenanted, concluded and agreed, by and between all the said Parties to these Presents, for themselves, and every of them, their and every of their Heirs, that the said Recovery so as aforesaid, or in any other Manner to be had and suffered of the said Messuage, Tenements, Lands, Hereditaments and Premises abovementioned, shall be and enure, and shall be deemed, adjudged and taken, and is meant and intended, and by all the said Parties to these Presents is hereby declared to be and enure. And the said J. K. and L. M. and their Heirs, from and immediately after the Suffering of the same, shall stand and be seised of all and singular the said Messuage, Tenements, Lands and Hereditaments abovementioned, and every Part and Parcel thereof, with the Appurtenances, to and for the proper Use and Behoof of the said C. D. his Heirs and Assigns for ever, and to and for none other Use, Intent or Purpose whatsoever.

In Witness, &c.

A Deed from Father, Son, and Trustees, to lead the Use of a Recovery to be suffered with treble Voucher.

THIS Indenture Tripartite, made, &c. between Sir G. H. of, &c. J. K. Son and Heir of the said G. H. E. B. of, &c. and M. C. of

of, &c. Brother to the said *E. B.* of the first Part, *M. N.* of, &c. of the second Part, Gent. and *L. B.* of the third Part, witnesseth, that as well for Docking and Barring the several Estates in Tail, Reversions and Remainders, and all other the Estate and Estates, Terms and Interests heretofore limited, created, or declared, of, for, or concerning the several Parcels of Pasture, Marsh Lands, Fresh and Salt Marshes, Lands and Tenements, and Hereditaments whatsoever, with the Appurtenances hereafter granted, or intended to be granted, as for settling, estating, and assuring the same, to the Uses, Intents, and Purposes hereafter mentioned. And for and in Consideration of the several Sums, &c. of, &c. of lawful Money of *England*, to them the said *B. G. L. K. N. O. P. R.* severally and respectively in Hand paid by the said *H. J.* at or before the Sealing and Delivery hereof, the Receipt whereof is hereby acknowledged, and for divers other good Causes and Considerations, them the said *Sir E. F. H. F. B. E.* and *R. F.* and every of them, hereunto respectively moving the said *Sir E. F.* and *H. F.* and the said *B. E.* and *R. F.* at the Instance and Request, and by the Direction and Appointment of the Delivery hereof, have and each of them hath granted, remised, released and confirmed, and by these Presents do, and each of them doth grant, remise, release, and confirm unto the said *H. J.* in his actual Possession now being, by Virtue of a Bargain and Sale to him made for one Year, by Indenture bearing Date the Day next before the Date hereof, and of the Statute made for transferring Uses into Possessions, and to his Heirs and

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Assigns, all, &c. to have and to hold the said Salt Parcels of Pasture, Marsh Land, Fresh and Salt Marshes, Lands, Tenements, Hereditaments and Premisses, hereby granted, remised, released and confirmed, or meant, mentioned and confirmed to be hereby granted, remised, released and confirmed, with their and every of their Appurtenances, to the said H. J. his Heirs and Assigns, to the Intent and Purpose that he the said H. J. may become a perfect Tenant of the Freehold of the said Premisses, with the Appurtenances, whereby one or more perfect common Recovery or Recoveries, as shall or may hereof be had or suffered in Manner or Form hereafter following. For which Intent and Purpose it is hereby covenanted, granted, concluded and agreed upon, by and between all the said Parties to these Presents, that it shall and may be lawful to and for the said F. B. to bring and prosecute against the said H. J. one or more Writ or Writs of Entry *sur Disseisin en le post*, returnable before his Majesty's Justices of the Court of Common Pleas at *Westminster* of this present *Easter Term*, of and for the said several Parcels of Pasture, Marsh Land, Fresh and Salt Marshes, Lands, Tenements, Hereditaments, and Premisses aforesaid, with their and every of their Appurtenances, by such Name or Names, Quantities, Qualities, Contents, and Numbers of Acres and Things of the said Sir B. G. and H. J. testified by their being made Parties to these Presents, and sealing, and by the said G. F. or his Counsel learned in the Law, shall be reasonably devised, advised, or required; to which said Writ or Writs the said H. J. shall appear *gratis*, and vouch to Warranty

Warranty the said Sir B. G. Party to these Presents, who also shall appear and enter into the Warranty, and vouch over to Warranty the said H. J. who also shall appear and enter into the Warranty, and vouch over to Warranty the common Vouchee, who also shall appear and enter into the Warranty for the said Premises, and after make Default, so that one or more perfect Common Recovery or Recoveries, with a treble Voucher over, may be duly had, executed, and perfected on or before the, &c. now next ensuing the Date hereof, of and for the said several Parcels of Pasture, Marsh Land, Fresh and Salt Marshes, Lands, Tenements and Hereditaments, and Premises aforesaid, with their and every of their Appurtenances, according to the Course of Common Recoveries in such Cases used. And it is hereby fully declared, concluded, and agreed upon by and betwixt all the said Parties to these Presents, and the true Intent and Meaning of all the said Parties, and these Presents is, that after the said Recovery or Recoveries suffer'd or executed, of and for the said Premises, or any of them, as well the said Recovery or Recoveries, as also all Fines, Recoveries, Settlements, and Assurances had, or to be had, made, executed, levied, or suffer'd by and betwixt the said Parties to these Presents, or any of them, of or for the said Premises, or any Part thereof, shall be and enure, and shall be construed, deemed, adjudged, and taken to be and enure, and so is the Intent of all and every the Parties to these Presents, at the Time of suffering the said Recovery; and so is expressed, limited and declared, that the same shall be and enure to the

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only proper Use and Behoof of the said *G. F.* Party to these Presents, his Heirs and Assigns for ever, and to and for no other Use, Intent, or Purpose whatsoever.

In Witness, &c.

*A Marriage Settlement made by
Fine and Recovery.*

THIS *Indenture Quadripartite* made between *C. D.* and *F.* his Wife, of the first Part, *E. F.* eldest Son and Heir apparent of the said *C. D.* and *J.* Wife of the said *E. F.* of the second Part, *H. J.* and *K. L.* of the third Part, *D. E.* and *F. G.* of the fourth Part, witnesseth, That for and in Consideration of a Marriage already had and solemnized between the said *E. F.* and *K.* his Wife, and in Pursuance and Part of Performance of certain Articles of Agreement made on the Contract of the said Marriage, bearing Date, &c. last past; and made, or mentioned to be made between the said *B. C.* and *B. A.* &c. and in Consideration also of the Sum of 12,000 *l.* of, &c. to the said *E. F.* in Hand paid, as and for the Marriage Portion of the said *K.* the Receipt whereof he the said *D. E.* doth hereby acknowledge and confess; and for the settling and assuring of the Manors, Lands, Tenements, and Hereditaments herein after mentioned, to and upon the several Uses, Intents, Trusts, and Purposes herein after limited, expressed and declared, pursuant to the said Marriage Articles above-mentioned; they the said *C. B.* and *D. E.* do, and either of them doth,

doth, for themselves, their Heirs and Assigns, covenant, grant, and agree to and with the said G. H. and K. L. their Heirs and Assigns, and the said * F. Wife of the said C. D. doth hereby consent and agree, that they the said C. D. and F. his Wife, and E. F. shall and will, on this Side and before the End of *Hillary* Term next coming, in due Form of Law, acknowledge and levy before his Majesty's Justices of the Court of Common Pleas at *Westminster*, unto the said F. G. and H. J. and their Heirs, or the Heirs of one of them, one Fine *sur Conuissance de droit come ceo*, &c. with Proclamations to be thereupon had, according to the Form of the Statute in that Case made and provided, of all that the Manor of, &c. and of all those the Manors of, &c. in the County of, &c. and of all other the Messuages and Lands of the said C. D. in the said County, and of the Reversion and Reversions, &c. of all and singular the said Manors and Premisses, and every Part and Parcel thereof, by such Name and Names, Quantities, Qualities, and Number of Manors, Messuages, Acres and Things; and in such Manor and Form, as by the Counsel learned in the Law of the said E. F. and G. H. shall be advised and thought fit; which said Fine so to be had and levied in Manner aforesaid, or in any other Manner to be had or levied of the said Manors and Premisses above-mentioned, with the Appurtenances, shall be and enure, and shall

* If a Feme Covert levies a Fine with her Husband, she is to be privately examin'd, if she consent freely; without which the Fine cannot pass. *Stat. 18 Ed. 1.*

be adjudged, esteemed, and taken to be and enure to and for the only Use and Behoof of the said *J. K.* and *L. M.* their Heirs and Assigns, whereby to make them Tenants of the Freehold of the said Premisses; yet nevertheless to this End, Intent and Purpose, that the said *J. K.* and *L. M.* shall and will, on this Side and before the End of, &c. Term next coming, permit and suffer the said *K. L. H. J.* in due Form of Law, to sue forth and prosecute one Writ of Entry *sur Disseisin en le post*, returnable before his Majesty's said Justices of the said Court of Common Pleas at *Westminster*, against them the said *J. K.* and *L. M.* of all and singular the said Manors and Premisses above-mentioned, and of every Part and Parcel thereof, with the Appurtenances, by such Names, Quantities, Qualities, and Number of Manors, Messuages, and Acres and Things, in such Manner, Form or Sort, as by the said *L. M.* and *H. K.* or their Counsel learned in the Law shall be devised, or advised and required: Unto and upon which said Writ of Entry so to be brought, the said *F. E.* and *D. E.* shall appear and vouch to Warranty the said *B. K.* and the said *B. K.* shall appear *gratis*, and enter into the said Warranty; and after his said Entry, shall vouch over the common Vouchee, who shall likewise appear and enter into the said Warranty, and imparl, and afterwards make Default; to the End one perfect Common Recovery*, with double Voucher, shall and may, of

* In prosecuting a Recovery, there is a Demandant and Tenant, and one called a *Warrant upon a supposed Warranty*,

of all and singlar the said Manor and Premisses above-mentioned, be had, prosecuted, and suffered in all Things, according to the usual Order and Form of Common Recoveries for Assurance of Lands, Tenements and Hereditaments, in such Cases used and accustomed; and the same Recovery shall also be executed, in due Form of Law, by one Writ of *habere facias Seisinam* accordingly; and it is fully granted, covenanted, concluded and agreed upon, and declared by and between the said Parties to these Presents, for themselves, their Heirs, and Assigns, that the said Recovery so, or in any other Manner or Form to be had or suffered, and also all and every other Recovery or Recoveries, to be had, suffered, or executed of the said Manors and Premisses, or any Part thereof, by or between the said Parties to these Presents, or by and between them, or any of them, and any other Person or Persons, on this Side and before the End of, &c. Term next coming, and the full Force of them, and every of them, and all other Assurance and Assurances of the said Premisses, or any Part thereof had, or to be had or made between the said Parties, or any of them, shall be and enure, and shall be adjudged, esteemed and taken, and are meant and intended to be and enure to, and for

vanty, who is the common Vouchee; the Demandant comes in, &c. and exhibits a Declaration against him, who prays a Day to make his Defence, but on the Day makes Default; whereupon Judgment is enter'd, that the Demandant shall recover the Land against the Defendant or Tenant in Tail, and he to recover in Value against the common Vouchee, &c. 10 Rep. 37, 38.

and

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and upon the several Uses, Intents, Trusts and Purposes, and subject to the Proviso's and Agreements herein after particularly mention'd, limited, expressed and declared, (that is to say) as for and concerning all that the Manor of, &c. and also, &c. with all and every their Appurtenances, and the Reversion and Reversions, Remainder and Remainders, Rents and Services thereof, to the Use and Behoof of, &c. and as for and concerning all that, &c. to the Use of, &c. [*Here insert the several Uses of the particular Estates, and the proper Proviso's and Covenants.*]

In Witness, &c.

Form of a Deed of Conveyance by Fine and Recovery.

THIS Indenture Tripartite made, &c. between G. H. of, &c. and S. his Wife, C. W. of, &c. and M. his Wife, of the first Part, J. W. of, &c. and H. G. of, &c. of the second Part, and N. S. of, &c. and L. S. of, &c. of the third Part, witnesseth, That for and in Consideration of the Sum of, &c. to the said G. H. and S. his Wife, and C. W. and M. his Wife, in Hand paid by the said N. S. and L. S. the Receipt whereof they do hereby acknowledge; and in Consideration also of five Shillings of, &c. to the said G. H. and S. his Wife, and C. W. and M. his Wife, in Hand paid by the said J. W. and H. G. the Receipt whereof they do also hereby acknowledge; and the said G. H. and J. W. for the barring, docking, cutting off, and

and destroying of all Estates-tail, and Remainders over now in Being, in and upon the Messuages, Lands, Tenements, and Hereditaments herein after mentioned, and for conveying and assuring the same Premisses to the only proper Use and Behoof of the said N. S. and J. S. and their Heirs, they the said G. H. and C. W. have, and each of them hath covenanted and granted, and by these Presents do, and each of them doth covenant and grant to and with the said J. W. and G. H. their Heirs and Assigns, that they the said G. H. and S. his Wife, and C. W. and M. his Wife, shall and will on this Side, and before the End of——Term next coming, before his Majesty's Justices of the Court of Common Pleas at *Westminster*, in due Form of Law, levy and acknowledge unto the said J. W. and G. H. and their Heirs, or to the Heirs of one of them, one Fine *sur Conusance de droit come ceo*, &c. with Proclamations to be thereupon had, according to the Form of the Statute in that Case made and provided, of all those Messuages or Tenements, &c. and also of all the Reversion and Reversions, Remainder and Remainders, Rents and Services of the said Premisses above-mentioned, and of every Part and Parcel thereof, with the Appurtenances, by such Name and Names, Quantity and Number of Acres and Things, and in such Manner and Form, as by the said J. W. and G. H. or their Counsel learned in the Law shall be reasonably devised, advised or required; which said Fine so to be had and levied in Manner aforesaid; and all and every other Fine and Fines already had, or at any Time hereafter to be had, levied, sued, or prosecuted of the said Premisses,

or any Part thereof, by itself or jointly, or any other Lands or Tenements by or between the said Parties to these Presents, or by or between them, or any or either of them——and any other Person or Persons, before the said——Term, as for and concerning all and singular the said Premises above-mentioned, with the Appurtenances, shall be and enure, and shall be adjudged, esteemed, and taken to be and enure to and for the only proper Use and behoof of the said *J. W.* and *G. H.* their Heirs and Assigns, to the Intent and Purpose that they may become perfect Tenants of the Freehold of the said Premises: Yet nevertheless to this further End, Intent and Purpose, that they the said *J. W.* and *H. G.* shall and will, on this Side and before the End of the said next—Term, permit and suffer the said *N. S.* and *L. S.* to sue and prosecute one or more Writ or Writs of Entry *sur Disseisin en le poist*, returnable before his Majesty's Justices of the said Court of Common Pleas, against them the said *J. W.* and *H. G.* of all and singular the said Premises above-mentioned, and of every Part and Parcel thereof, with the Appurtenances, by such Name and Names, Quantity and Number of Messuages, Acres and Things, and in such Sort, Manner and Form, as by the said *N. S.* and *L. S.* shall be thought fit and convenient; unto and upon which said Writ of Entry so to be brought, the said *J. W.* and *H. G.* shall appear and vouch to Warranty the said *G. H.* and *S.* his Wife, and *C. W.* and *M.* his Wife, who shall likewise appear, either in their several Persons, or by their Attornies lawfully authorized, and enter into the said Warranty; and after their said Entry
into

into their said Warranty, shall vouch over the common Vouchee, who shall also enter into the said Warranty and imparl, and afterwards make Default; to the End one perfect common Recovery shall and may, of all and singular the said Premisses above-mentioned, be had, prosecuted, and executed in all Things, according to the usual Form of Common Recoveries for the Assurance of Lands, Tenements, and Hereditaments in such Cases used and accustomed; and the same Recovery shall, in due Form of Law, be executed by one Writ of *Habere facias Seisnam* accordingly: And it is covenanted, granted, concluded, and agreed upon by and between the said Parties to these Presents; and the true Intent and Meaning hereof is, and it is hereby so declared, that the said Recovery so, or in any other Manner, to be had and suffered, and all and every other Recovery and Recoveries to be had, suffered, and executed of the said Premisses, or any Part thereof, by or between the said Parties to these Presents, or by or between them, or any or either of them, and any other Person and Persons, on this Side and before the End of ——— Term next coming; and the full Force and Execution of them, and every of them, and all other Conveyances and Assurances of the said Premisses, or any Part thereof had, or to be had or made between the said Parties, or any of them, shall be and enure, and be adjudged, esteemed, and taken to be and enure to and for the only proper Use and behoof of the said N. S. and L. S. their Heirs and Assigns for ever; and each of them the said G. H. and C. W. for himself, severally and apart, and not jointly, and for his several and respective

tive Heirs and Assigns, doth severally and apart, and not jointly, covenant and grant to and with the said *N. S.* and *L. S.* their Heirs and Assigns, that they the said *G. H.* and *S.* his Wife, and *C. W.* and *M.* his Wife, are, or some or one of them now is, lawfully and rightfully seised of a good, sure, perfect, and indefeasible Estate of Inheritance in Fee-simple, or Fee-tail, of and in the said Premises above-mentioned, with the Appurtenances, in their, or some or one of their own Rights or Right, without any Condition, Mortgage, Limitation of Use or Uses, or other Matter or Thing, to alter, charge, change, and determine the same; and also, that they the said *N. S.* and *L. S.* their Heirs and Assigns, shall and may, from Time to Time, and at any Times hereafter for ever, from Time to Time peaceably and quietly enter into, have, hold, occupy, possess, and enjoy all and singular the said Premises above-mentioned, and every Part and Parcel thereof, with the Appurtenances, without the Let, Trouble, Hindrance, Molestation, Interruption, and Denial of them the said *G. H.* and *S.* his Wife, and *C. W.* and *M.* his Wife, their Heirs and Assigns, or any of them, and of all and every other Person or Persons whatsoever claiming, or to claim by, from, or under them, or any or either of them; and further, that they the said *G. S.* and *S.* his Wife, *C. W.* and *M.* his Wife, and their Heirs, and all and every other Person and Persons, and his and their Heirs, any Thing having and claiming in the said Premises above-mention'd, or any Part thereof, by, from, or under them, or any or either of them, shall and will, at any Time or Times hereafter, at the reasonable Request,

quest, and at the Cost and Charges of the said N. S. and L. S. their Heirs and Assigns, make, do and execute, or cause and procure to be made, done and executed, all and every such further and other lawful and reasonable Grants, Acts, and Assurances in the Law whatsoever, for the further, better, and more perfect Granting, Conveying, and Assuring of all and singular the said Premisses above-mentioned, with the Appurtenances, unto the said N. S. and L. S. their Heirs and Assigns, to the only proper Use and Behoof of the said N. S. and L. S. their Heirs and Assigns, for ever, according to the true Intent and Meaning of these Presents, as by the said N. S. and L. S. their Heirs or Assigns, or their or either of their Counsel learned in the Law shall be reasonably devised, advised or required.

In Witness, &c.

Suffering a Recovery, and making a Tenant by Release.

THIS *Indenture Tripartite* made, &c. between T. R. &c. on the first Part, P. D. of, &c. Esq; of the second Part, and F. L. of, &c. Esq; of the third Part, (as in other Releases to the End of the *Habend'* and Uses) to the only proper Use and Behoof of the said P. D. his Heirs and Assigns for ever, and for the further and better assuring and conveying the said Manors, Messuages, Lands, Tenements, Hereditaments, and Premisses hereby granted unto the said P. D. and his Heirs; and also for
barring

barring and docking all Estates-tail, Remainders and Reversions of and in the same, it is concluded, covenanted, granted, and agreed by and between the said Parties to these Presents, That, in order to suffer one or more good Common Recovery or Recoveries of all and singular the said Premises, it shall and may be lawful to and for the said *F. L.* before the End of *Michaelmas* Term next ensuing the Date of these Presents, at the proper Costs and Charges in the Law of the said *T. R.* to sue forth and prosecute out of his Majesty's High Court of Chancery, returnable before his Majesty's Justices of the Court of Common Pleas at *Westminster*, one or more Writ or Writs of Entry *sur Disseisin en le post*, against the said *P. D.* thereby demanding the said Manor, Messuages, Lands, Tenements, Hereditaments, and all and singular other the Premises, with their and every of their Appurtenances, by such Descriptions as will effectually comprise the same; to which said Writ or Writs the said *P. D.* shall appear *gratis* in his own proper Person, and vouch to Warranty the said Parties; as also the said *T. R.* shall appear *gratis* in his own proper Person, or by his Attorney lawfully authorized for that Purpose, and enter into the said Warranty the common Vouchee: Proper Judgments to be thereupon given, and such other Proceedings to be thereupon had, as is usual in Common Recoveries with double Vouchers suffer'd for Assurance of Lands; and it is hereby declared and agreed by and between all the said Parties to these Presents, and the true Intent and Meaning of them, and every of them is, and so is hereby declared to be, that the said Common Recovery, or Common

Recoveries, so as aforesaid, or in any other Manner, or at any other Time to be had, suffer'd, and executed of the said Manor, Lands, Tenements and Hereditaments, and Premisses, or any Part thereof, shall be and enure, and is hereby declared to be and enure to the only proper Use and Behoof of the said *P. D.* his Heirs and Assigns, for ever, and to, for, or upon no other Use, Intent, or Purpose whatsoever; and the said *T. R.* Party to these Presents, for himself, his Heirs, Executors and Administrators, doth covenant, promise, and grant to and with the said *P. D.* his Heirs and Assigns, by these Presents, in Form and Manner following, (that is to say) &c. as in others to the End.

In Witness, &c.

Mortgage, by Way of Lease and Release, and Covenant for a Recovery.

THIS Indenture Tripartite made, &c. between *A. B.* of, &c. the Mortgagor, of the first Part, *C. D.* of, &c. Mortgagee, of the second Part, and *E. F.* of, &c. Demandant, of the third Part, witnesseth, (as in other Mortgages;) Writ or Writs of Entry, &c. shall be brought in the Name of the said *E. F.* as Plaintiff or Demandant therein against the said *C. D.* as Tenant of *C.* for the said Manor, &c. to which said Writ or Writs the said *C. D.* shall appear, &c. and shall vouch to Warranty the Premisses the said *A. B.* who shall likewise

PART II.

D d

appear,

appear, &c. and shall vouch the common Vouchee, &c. and it is concluded, &c. to and for the only proper Use and Behoof of the said C. D. his Heirs and Assigns, for ever, subject nevertheless to the Proviso herein after mentioned; that is to say, provided, &c.

The Uses of a Recovery in a Mortgage.

THAT is to say, in the first place, to the Use and Behoof of the said R. C. his Executors, Administrators and Assigns, for the said Term of 500 Years, for the better securing the said Debt of, &c. and Interest; and after the Expiration, or other sooner Determination of the said Term of 500 Years, to the Use of the said A. P. his Heirs and Assigns for ever, and to and for, &c.

R. C. the Mortgagee.

A. P. the Mortgagor.

C O N.

CONCLUSION.

HAVING at length set forth at large the Nature and original Commencement of common or feigned Recoveries, it will not be improper or amiss to recite what may be alledged in Vindication of them, to obviate the Objections, Aspersions, and Scandal raised against them.

And as Common Recoveries are one Part of the main Pillars which support the Estates and Inheritances of the Kingdom, as being the Common Assurances of the Land, approved of and advanced by several Acts of Parliament, and maintained by the Authority of Variety of Cases; and Common Recoveries, by a benign Interpretation, ought to be maintained, as being the Common Assurances of the Land. 3 Co. Rep. Marq. of *Winchester's* Case. And it may be answered to what may be alledged against them, that there never was any Thing by the Wisdom of Man so well contrived, or so surely established upon Law and Reason, which the Sagacity and Cunning of those who are subtil and malicious hath not abused; and therefore it appeareth by the Preamble of the Act of 34 H. 8. that when the King giveth Lands in Tail to his Loyal and Faithful Subjects and Servants, intending not only to advance the Donees, but the Heirs in Blood of their Bodies, to the Intent that the Heirs of their Bodies should have in Memory the Profit which they have by the Service of their Ancestors, and thereby themselves be encouraged to do the like Service

to their Sovereign Lord the King; it was well done by the Parliament to tax the Donees in suffering of false and feigned Recoveries, to overthrow the Intent of the King's Gift and Bounty, by disinheriting of their Issues; *Quia confirmat Usum qui tollit Abusum*; and yet such was the Force of a Common Recovery in such Case at the Common Law, before the said *Stat.* of 34 *H.* 8. that the Estate-tail by a Common Recovery was barred, although the Reversion was in the King; and nothing could remedy the same, but an Act of Parliament. 10 *Co.* Rep. 39. *Mary Portington's Case.*

In the general Case of Common Assurances, that is, in the Case of a Common Recovery, he who entereth into the Warranty may save his Rent; and yet if he enter into the Warranty, generally, it may be saved in a Covenant and Agreement in an Indenture made before the Recovery, and that in Favour of Common Recoveries, which are the Common Assurances of the Land; the usual Form of which shall not be alter'd by a special Manner of Entry, saving his Rent or Condition, but may be saved by an Indenture *dehors*, and Conveyances, which are used for Common Assurances of Lands, shall be expounded and construed according to common Allowance, and not be looked into by Eagles Eyes; for a Common Recovery had against Husband and Wife, shall bar the Wife of her Dower, and yet the Wife shall not have any Recompence in Value; and therefore, in Strictness of Reason, it is hard to maintain it, but common Usage, and the Intent of Parties, maketh it a Bar; *Et non est recedendum de communi observantia, & minime mutanda*

tanda sunt quæ certam Interpretationem habuerunt.
2 Co. Rep. 74. *Lord Cromwell's Case.*

In the Acts of 32 H. 8. and 14 Eliz. when a Common Recovery was had against Tenant for Life, to the Prejudice of those who had the Inheritance, the same might well be called *Covinous*, and by Collusion; and in the same Case, when Tenant for Life, Remainder to *A.* in Tail, the Remainder to *B.* in Tail, &c. with divers Remainders over, and Tenant for Life suffereth a Common Recovery, in which he voucheth *A.* and he the common Vouchee, it shall bind all the other Remainders; for no *Covin* or Collusion can be supposed, when the next in Remainder in Tail, who hath the Inheritance, immediate is vouched; and so adjudged in *Jennings's Case*: And in divers Acts of Parliament, Common Recoveries have received Allowance and Advancement; and therefore the *Stat. 7 H. 8. cap. 4.* reciting that divers, as well Nobles as others, have suffer'd Common Recoveries against them of divers of their Manors, &c. for Performance of their Wills, Assurance of Jointures to their Wives, &c. the same Act, in Approbation of Common Recoveries, giveth Remedies to such Recoveries in divers Cases. And *St. Germyn*, in his Book of *Doctor and Student*, cap. 26. approveth Common Recoveries to bind as well in Conscience as Law; and by the *Stat. of 23 Eliz. cap. 3.* it is enacted, That for avoiding of the Danger to Assurances of Land, and for Advancement of Common Recoveries, that any Common Recovery shall not be avoided for any want of Form in Words, and not in the Matter of Substance.

Observe; *Semper in fictione Juris subsistit Æquitas*, and *contra negantem Principia non est disputandum*; and in Truth none ought to be heard to dispute against the legal Pillars of Common Assurances of Lands, and Inheritances of the Subject; and at a Parliament holden in the Reign of Queen *Elizabeth*, in the great Case between *T. Vernon* and Sir *Edward Herbert*, Hoord, an utter Barrister, of Counsel with *Vernon*, rashly and with great Malice did inveigh against Common Recoveries; whereupon *Dyer* (Ch. J.) said, *He was not worthy to be a Lawyer who durst speak against Common Recoveries, which were the Sinews of Assurances of Inheritances, and grounded upon great Reason and Authority. Sed non omnis capit hoc verbum.* 10 Co. Rep. 39, 40. *Mary Portington's Case.*

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